the weekly standard

AUGUST 1, 2005 • $3.95

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ROBERTS RULES

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The *real* issues of Social Security reform

There is no longer any doubt that Social Security needs to be reformed. The nation's troubled retirement program will begin running a deficit in just 12 years. Overall, the program faces unfunded liabilities of more than $12 trillion. But while the politicians in Washington debate whether this represents a crisis or just a big problem, the Cato Institute believes it is an opportunity to build a new and better retirement program for all Americans.

Ownership

Under the current Social Security system you have no legal, contractual, or property rights to your benefits. What you receive from Social Security is entirely up to the 535 members of Congress. But personal retirement accounts would give you ownership and control over your retirement funds. The money in your account would belong to you—money the politicians could never take away.

Inheritability

Because you don't own your Social Security benefits under the current system, they are not inheritable. Millions of workers are not able to pass anything on to their loved ones. But personal retirement accounts would change that by enabling you to build a nest egg of real, inheritable wealth.

Choice

Choice is part of the essence of America. Yet when it comes to retirement, Congress forces all Americans into a one-size-fits-all, cookie-cutter retirement program, a system that cannot pay the benefits it has promised and under which you have no right to the money you pay in. With personal retirement accounts, workers who wanted to remain in traditional Social Security could do so. But younger workers who wanted a choice to save and invest for their future retirement would have that option.

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the weekly Standard

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The Kids' Clothes Make the Man?

It is, to coin a phrase, a mad, mad, mad, mad world. Terrorists bomb subways. Dictators not-so-secretly build nukes. Civil wars rage. And sometimes, parents dress their children in clothes "which do not acknowledge trends, popular culture or the passing of time."

In the midst of the last of these crises THE SCRAPBOOK is especially grateful for the insights of Robin Givhan, fashion writer. Givhan's musings grace the pages of the *Washington Post* "Style" section, where her specialty is allergic reactions to the clothing of people whose politics she disapproves of. And so it was Friday, July 22, when Givhan recoiled from the sickening display of "self-consciously crafted perfection" at the White House announcement of John Roberts as President Bush's nominee for the Supreme Court. In a shocking lapse of judgment, Givhan reports, the Roberts family failed to select its "attire from the commonly accepted styles of this century."

> The nominee was in a sober suit with the expected white shirt and red tie. His wife and children stood before the cameras, groomed and glossy in pastel hues—like a trio of Easter eggs, a handful of Jelly Bellies, three little Necco wafers. There was tow-headed Jack—having freed himself from the controlling grip of his mother—enjoying a moment in the spotlight dressed in a seersucker suit with short pants and saddle shoes. His sister, Josie, was half-hidden behind her mother's skirt. Her blond pageboy glistened. And she was wearing a yellow dress with a crisp white collar, lace-trimmed anklets and black patent-leather Mary Janes. . . . The children, of course, are innocents. They are dressed by their parents. And through their clothes choices, the parents have created the kind of honeyed faultlessness that jams mailboxes every December when personalized Christmas cards arrive. . . . Everyone looks freshly scrubbed and adorable, just like they have stepped from a Currier & Ives landscape.

The horror! *Her blond pageboy glistened.* In the 21st century, washing children's hair before TV appearances is out. Dirty is the new clean. And who among us would go anywhere in threads that *do not acknowledge trends, popular culture or the passing of time?* Maybe they should have thrown a clock around little Jack's neck—a la Flava Flav—and accomplished all three at once.

In dressing this way, Givhan continued, "the Roberts family went too far. . . . In the desire to be appropriate and respectful of history, the children had been costumed in it." It is this kind of insight that keeps THE SCRAPBOOK from canceling its *Washington Post* subscription. Without Robin Givhan's timely critique, we would have naively believed that the Roberts children looked "freshly scrubbed and adorable" simply because it was a big day for Dad, and that the Robertses would want their kids to look nice while sharing the White House stage for his media-saturated historic moment.

We suspect that despite the fashion faux pas of his family, John Roberts will almost certainly be confirmed. And we look forward to Givhan's critique of the new justice's robe, plainly a symbol of the dark, foreboding shadow his presence on the court casts over the new century. ♦

Blank Slate

No sooner had President Bush nominated John Roberts to the Supreme Court last Tuesday than *Slate*, the Internet magazine, published an attack on the nominee's jurisprudence. Which was to be expected, we suppose, since finding fault with Bush is the publication's animating editorial impulse. What wasn't to be expected—*Slate* also being the sort of Internet magazine that caters to the right side of the bell curve—was that this criticism would make absolutely no sense.

In "Thank You, Mr. President," senior editor Emily Bazelon attacks a July 15 decision in which Roberts—who currently sits on the D.C. Circuit Court of Appeals—joined two of his colleagues to reverse a lower court's decision enjoining Defense Secretary Donald Rumsfeld "from conducting any further military commission proceedings" against one Salim Ahmed Hamdan, formerly of Afghanistan.

The three-judge panel's unanimous ruling, Bazelon harrumphs, is "seriously troubling." Anyone "who values civil liberties" oughta be concerned. Because Roberts & Co. just wrote a "blank check grant of power" to President Bush, allowing him "to try suspected terrorists without basic due-process protections."

Well, no.

In November 2001, in Afghanistan, Northern Alliance troops captured Salim Ahmed Hamdan, whose last steady job was as Osama bin Laden's chauffeur. He's been living in American military prisons ever since. And this incarceration is terribly unfair, the al Qaeda member's lawyers argue, because, as a prisoner of war, Hamdan is entitled to full protection under the Geneva accords. Hamdan's lawyers argue, too, that the system of military tribunals under which President Bush

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seeks to try their client—who "trained at the al Qaeda-sponsored al Farouq camp," according to court documents—is altogether unconstitutional, as it violates the separation of powers.

Not true, the appellate court ruled, based on a truckload full of federal statutes and Supreme Court precedents. And not true, the appellate court further ruled, that you can just walk into any court in the United States and invoke your rights "under the Geneva Convention"—because, according to still more Supreme Court precedents, the Geneva Convention "cannot be judicially enforced." And even if the Convention could be "judicially enforced" . . . well, that wouldn't help Hamdan all that much, since the Convention "does not apply to al Qaeda and its members." It's entirely within the president's power, in a time of war, to establish military tribunals, and to prosecute sleazebag terrorists like Hamdan in them. Supreme Court precedent suggests as much.

What's troubling to Bazelon, though, is that "the panel's reasoning" is "at odds with a stance that Justice O'Connor"—whom Roberts hopes to replace—"took this spring." O'Connor wrote that international treaties may "contain provisions which confer certain rights." Of course, Bazelon notes, "O'Connor wasn't writing about Geneva." And she "wasn't writing about Guantanamo." And then there's the fact that O'Connor wrote the above quote in a minority opinion. "Because O'Connor didn't speak for a majority of the Supreme Court," Bazelon concludes, "she wasn't making law."

True! Still, "it's close to impossible to square [O'Connor's] stance with the panel's opinion in Hamdan." Which stands to reason. Judges Roberts, A. Raymond Randolph, and Stephen Williams were following the Supreme Court—not Sandra Day O'Connor.

In other words: Bazelon's chief criticism of Roberts is that he joined in a unanimous ruling which deferred, as appeals courts are supposed to do, to established precedent. Or, in still other words: Bazelon's chief criticism of Roberts is that she disagrees with him—and with a whole host of other people, not a few of whom sit on the highest court in the land.

We're betting, by the way, that the Roberts-is-too-harsh-on-terrorists attack won't gain much traction, even among Judiciary Committee Democrats. ♦

Reporters Behind Bars

The Scrapbook is appalled at the jailing of *New York Times* reporter Judith Miller in the ongoing investigation into the outing of Bush critic Joe Wilson's CIA agent wife. But we reserve the right to run out of sympathy if her boss, executive editor Bill Keller, gives any more inane interviews like the one *Editor & Publisher* ran on July 18. There we learn that jail is full of people who aren't anything like *New York Times* reporters: "Her time is also occupied with reading from the prison library and watching CNN and Fox News when other prisoners do not keep the shared television on hip-hop and rap music videos. 'Those seem to be the favorite of the cell block,' Keller said." ♦

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Casual

The Big Picture

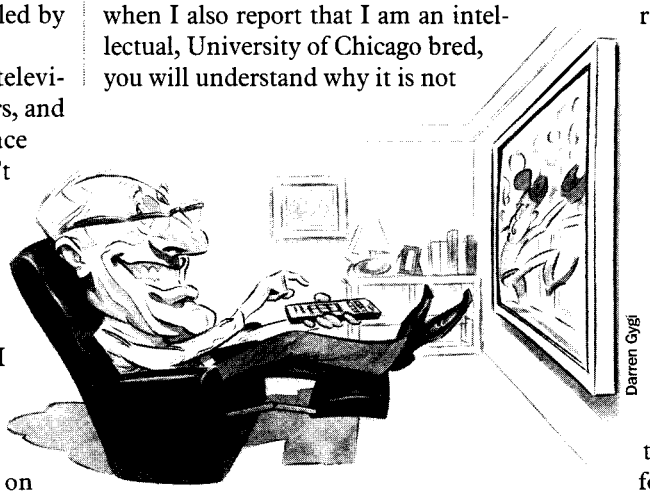
Some of us look at the big picture and some of us, unfortunately, do not. I have myself only recently begun to look at the big picture. And by big picture I mean a picture 42" diagonally across. In plainer words, I just purchased a new large-screen plasma television set, and the size and perfection of it both appall and thrill me. I am appalled at my weakness for such a bit of unnecessary luxury and thrilled by the delight I'm finding in it.

I had a standard size (27") television set for, roughly, twelve years, and it hummed along without once needing to be repaired. It wasn't the television set but I who was beginning to break down. The last year or so I discovered that, in my adagio (I hope) foxtrot to the grave, I did not see things on it as clearly as I used to do. Three-point shots, close calls at second base, small boxes showing the inning or quarter or time left on the shot clock were no longer quite visible to me without a proper squint or, sometimes, having to rise out of my chair and walk right up to the television set to find out how or where, precisely, things stood.

I probably would have suffered along in this way until my old television set broke down, but then a month or so ago the mail brought a check for rather larger royalties than I expected for one of my recent books. I use the word "royalties," but until recent years I used to designate these checks, such were their negligible amounts, as "peasantries." I determined a portion of this check ought to be spent in an entirely self-indulgent way. A plasma television set seemed to fill the bill nicely.

I bought a Sony high-definition set, which, with its various bells and whistles, came in at around five grand. If one is going to hell, then I say let's go first-class, so I added HBO and Turner Classic Movies to my cable package and a DVR, which is a TiVo-like feature that allows me to record ballgames and movies and shows without requiring tape.

You might think it obvious beyond all reckoning when I report my pleasure in this new television set. But when I also report that I am an intellectual, University of Chicago bred, you will understand why it is not obvious at all. Intellectuals are trained to loathe television, seeing in it the seeds of violence in children, the vast dumbing down of American culture, and the ruination of political and public life generally. When it is not purely evil, television, the catechism here holds, is a thorough waste of time.


Darren Gygi

I have never seen a television set in the living room of an apartment or house in Hyde Park, the neighborhood of the University of Chicago. My old television set sat in our living room but in a large dark cabinet, with the stereo system on shelves below; its doors were often closed when it wasn't in use. My new television set, too large to hide, dominates the room. Stepping into my living room, I gaze at this piece of gleaming machinery, which goes with none of the surrounding furniture, and feel as if someone has by mistake parked a Ferrari there.

My general pattern is to be haughtily contemptuous of creature comforts and then, once I acquire them, grow accustomed to them with an unseemly haste. Had I been born much earlier, I'm sure to have made an utterly persuasive case against indoor plumbing. What do I need it for, I would no doubt have asked, as I have since asked about multiple other conveniences, all afterwards acquired and enjoyed with uncomplicated pleasure. I am a moral puritan, saved only by his hypocrisy.

"Things are in the saddle and ride mankind," said Emerson. Easy for old Waldo to say. He never saw, in high definition, Aaron Rowand, the centerfielder of the Chicago White Sox, loping back to catch a long fly ball at the warning track in center, or was ever able to reheat his morning tea to perfection in a microwave, or tapped a Macintosh X Tiger program to bring up the new Dashboard feature that yields a five-day weather forecast, all of the previous night's baseball scores, the listings at local movie theaters, an account on the progress of one's stocks, and many more such items. If things ride man, very well: I say toss a saddle over me.

I watch some news on television, and doubtless too much sports, and always hope a good older movie will turn up. I usually sit there with a magazine in hand or a book of lesser intellectual density than any of those written by Johann Gottlieb Fichte. *Seinfeld* was the last show I looked forward to. But now, if my new television turns me into even more of a couch potato than I already am, so be it. If I am to live out the rest of my days as a couch potato, this set will at least allow me to do so *au gratin*.

Joseph Epstein

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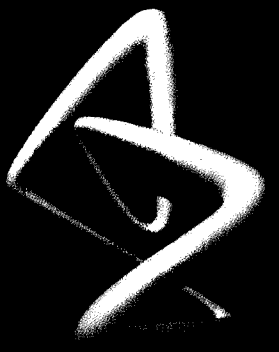
What does this stand for?



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War Against Islamists?

William Kristol's citing of Churchill in "Victory in Spite of All Terror" (July 18) serves as a reminder of the value of leaders who deliver honest, direct, and sobering pronouncements to the public.

The war in which we are all presently engaged, however, is not a war against terror, but a war against Islamic fundamentalists. Terror, like, say, carpet bombing, is but a method of engagement. Not knowing who your enemy is invites sure defeat. Churchill made no mistake about stating who his enemy was, and we should heed his example if we desire victory.

Eric Hoppe
Düsseldorf, Germany

Cut It Out

Regarding William Kristol's "Remember Tax Cuts?" (July 4 / July 11): Bush's tax cuts may have worked to pull us out of a mild recession, but that does not mean they need to be permanent. We might instead focus our attention on federal spending, which *never* decreases. In fact, in Bush's February budget submission, he projects that between 1999 and 2009 annual federal government receipts will grow by $566 billion, while annual outlays will grow by $1.031 trillion, twice the growth of receipts.

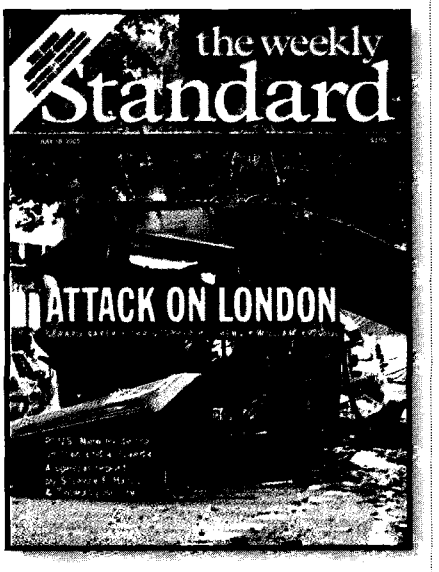
Federal spending goes up by 75 percent in that decade, and those numbers do not include any costs of Social Security reform or many of the costs of Iraq and Afghanistan. In 2009 the "on-budget" deficits (i.e., excluding Social Security) are projected to be running at nearly a half trillion per year.

The focus needs to be not on cutting taxes, but on eliminating the horrendous, fiscally irresponsible deficit, which means that the focus needs to shift to *spending* cuts. Cuts of 25 to 30 percent, necessary to eliminate the deficit, would not be as popular as tax cuts, but financial reality does need to be faced.

Bert McLachlan
Katy, TX

Forgetting The Belt?

Matt Labash's "Hunting Bubba" (June 20) was eye-opening. As an SUV-driving Republican from the



South, I am sure that I can solve Mudcat's quandary about why northern liberals have not been able to infiltrate the South. Simply put: It is the Bible Belt of this country.

The good book says, "By their fruits you shall know them." Labash gives anyone seeking the truth about Mudcat more than one can stomach, for Mudcat, as seen in his language, certainly does not exemplify the virtues that many southerners value. Just because Mudcat fishes and hunts doesn't mean he knows anything about the culture and values of the South. In fact, his "fruits" stink to high heaven.

Susan Sykes
Tucker, GA

Job Options for Mom

Meghan Cox Gurdon's "Professional Mothers" (July 18) describes the "greatest dilemma of modern motherhood" as whether to quit work for the sake of children or to keep working for the monetary and psychic benefits. The choice is not so stark, though.

Many jobs and professions have always allowed time for other activities, including children. Department of Labor data show that 26 percent of employed mothers work part-time (fewer than 35 weekly hours), as do 30 percent of such mothers with children under the age of six. Other employed moms choose jobs with flexible schedules: 73 percent of workers in education, training, and library occupations are women, as are 89 percent of workers in health care support occupations.

Although Cox's story of the sad redhead in day care was heartbreaking, it is not typical. Census data show that fewer than 20 percent of young children of employed mothers are in day care: Most are cared for by relatives.

Our dynamic labor force of 150 million has about 52 million new hires and 50 million separations annually, and an unemployment rate of about 5 percent. People change jobs until they find the best possible combination of pay and hours. There are jobs for everyone, and the choice of more time or more money is a dilemma common to all.

Diana Furchtgott-Roth
Washington, DC

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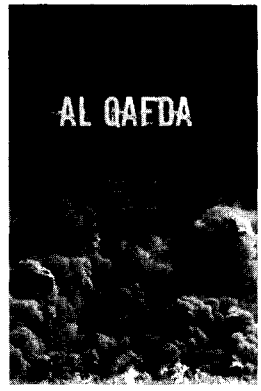

Terrorism expert Williams reveals persuasive evidence that al Qaeda has now established connections with the Sicilian Mafia, which is helping to finance terrorism through the sale of heroin. In addition, he reveals the ties between al Qaeda and an obscure Salvadoran street gang, which calls itself Mara Salvatrucha and has expanded exponentially. In exchange for big money, this violent group of anarchic thugs has smuggled weapons of mass destruction and sleeper agents across the Mexican border onto American soil.

Williams convincingly demonstrates that by means of this network Osama bin Laden is now in a position to execute his dream of an American Hiroshima, an apocalyptic act of mass murder within the borders of the United States.

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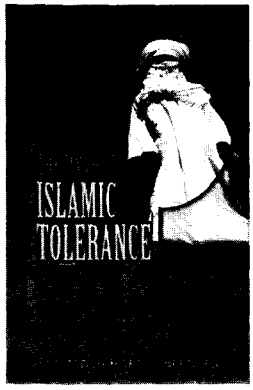

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the weekly Standard

It Takes an Establishment

It takes an insurrection to change a country. It takes an establishment to govern one. Conservatives want both to change and to govern America. Thus we need our dissatisfied, troublemaking, occasionally splenetic, sometimes raffish anti-establishmentarians. After all, without brave resistance and bold insurrection on the part of conservatives, liberal orthodoxy and institutions would still dominate American life.

But insurrection isn't enough. At some point, the radicals need assistance, support, and reinforcement from establishment conservatives—individuals ill-suited to insurrection but well-suited to rising through the institutions and moving them gradually but meaningfully in a conservative direction. Thus, we need our sober, calm, and respectable establishmentarians. Conservatives also need to be able to put together majorities—in public opinion, in Congress, and on the courts. The conservative tent therefore has to be a big one. As a Supreme Court justice, John Roberts will be an important (and, we trust, happy) camper in that tent.

Peter Steiner

Roberts is no Bork, no Scalia, and no Thomas. He's probably more like the man for whom he clerked, Chief Justice Rehnquist—or the man Rehnquist replaced, John Marshall Harlan. A court with, so to speak, five Scalias would be fun. But it won't happen. A court with a majority made up of some Scalia-Thomas types and some Rehnquist-Harlan types is possible. Indeed, with his choice of John Roberts, President Bush has begun to create such a court, one heading towards a constitutionalist majority.

When he nominated Roberts, Bush said that Roberts will "strictly apply the Constitution and laws—not legislate from the bench." Despite its boilerplate nature, this one-sentence description actually seems to be a pretty good summary of how Roberts approaches judging. And in practice, this kind of precise judicial legalism, grounded in real respect for the Constitution and the law, will tend to move in the same direction as a more ambitious and more theoretical constitutional originalism: After all, how often on big cases did Rehnquist differ from Scalia or Thomas?

The early assaults on Roberts from the left could barely disguise the fear lurking in the breasts of the attackers.

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Democrats are on the spot. If most Democratic senators vote to confirm Roberts, yielding to his stellar credentials, then they will have established the precedent that a conservative who neither commits himself to upholding Roe nor endorses its underlying rationale ought to be confirmed. If they vote against Roberts, then their opposition to the next appointee will be discounted—they're simply against anyone likely to be nominated by this president.

Let's not lose sight of this, either: Merit is a conservative principle. Selecting a first-class nominee, and refusing to bend to political expediency, is a conservative act. In this respect, the nomination of Roberts sends a signal that Bush understands the Court matters, and that on things that matter, he will rise to the occasion and scorn identity politics.

Bush is also taking the long view. According to the White House account of Tuesday's events, President Bush ducked out of a lunch for Australian prime minister John Howard to call Roberts to offer him the job. When Bush stepped back in, he said, "I just offered the job to a great, smart, 50-year-old lawyer who has agreed to serve on the bench." Notice the "50-year-old." Roberts's youth was on Bush's mind. He wanted an appointment that could help mold constitutional law for a long time to come.

There's been a lot of intelligent commentary on Roberts—some in newspapers, more on the web. One of the most interesting comments came from a lawyer in his mid-30s, Brad Joondeph, on the liberal website *thinkprogress.org*. Joondeph describes his experience as a summer associate at Hogan & Hartson 12 years ago, when John Roberts was his official "mentor." He recalls of Roberts that "he could not have been nicer, more gracious, more encouraging. He offered mentoring advice to a snot-nosed, 24-year-old law student as if it were the most important part of his job." Then Joondeph tells this anecdote:

"After returning to Stanford that fall, I was lucky enough to have my student note published in the Stanford Law Review. It was a rather presumptuous and self-righteous critique of the Supreme Court's decision in *Freeman* v. *Pitts*, a school desegregation case from DeKalb County, Georgia. I argued that the Court was pulling the rug out from under *Brown* v. *Board of Education* by prematurely ending court-ordered desegregation remedies. As deputy solicitor general in the first Bush administration, Roberts had actually argued the *Freeman* case as amicus in support of the school district. I therefore (again, fairly presumptuously) sent him my note, in which I contended that, well, Roberts had been all wrong.

"A few weeks later, I received a two-page letter in response. Roberts wrote that the note was well researched and well written. (I was thrilled at the time, but I would now strongly disagree.) But he also offered a thoughtful critique of my analysis that was several paragraphs in length. This was more feedback than I had received from my professors in law school.

"So I have nothing but a profound sense of respect for John Roberts: for his integrity, his intelligence, his humility, and his genuine human decency.

"All of that said, my best guess is that he would be a very conservative justice. And because he is so gifted and so decent a human being, he might become incredibly influential on the Court, moving it in ways that justices like Scalia and Thomas have been incapable. In short, he could ultimately be a progressive's worst case scenario."

Joondeph concludes, "So all of this leaves me quite conflicted."

Not us. It leaves us pleased by the Roberts nomination, proud of President Bush, and looking forward both to the nomination fight and to John Roberts's joining the Supreme Court.

—*William Kristol*

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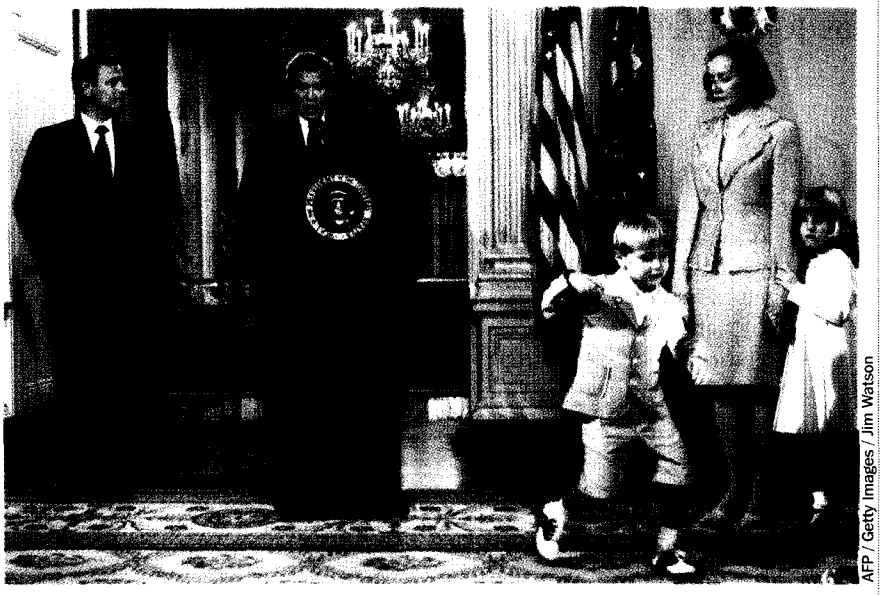
Souter-phobia

Remembrance of nominees past shaped Bush's decision. BY FRED BARNES



AFP / Getty Images / Jim Watson

Bush with John, Jack, Jane, and Josie Roberts

IN THE DAYS before President Bush picked a Supreme Court nominee, the White House was gripped by Souter-phobia. Bush and his aides desperately wanted to avert the disaster that befell his father's White House in 1990. The elder Bush, on the advice of his chief of staff John Sununu and Senator Warren Rudman of New Hampshire, picked an unknown judge, David Souter, for the Supreme Court, thinking he was a conservative. Souter turned out to be a flaming liberal, so much so that Senator Ted Kennedy now regrets having voted against confirming him. In naming Souter, Bush had passed over another judge he'd interviewed for the job, a real conservative from Texas named Edith Jones. The reason: Confirmation of Souter looked easier and probably was. For conservatives, however, his elevation to the High Court was a mistake for the ages.

Fred Barnes is executive editor of THE WEEKLY STANDARD.

Fear of another Souter led George W. Bush to seek the answer to a single question when he interviewed five potential nominees. All five were deemed to be conservatives. The question was whether they'd be the same 25 years from now as they are today—in other words, just as conservative. The interviews lasted from one hour to nearly two. Bush found John Roberts the most impressive. He decided Roberts would not lurch to the left as Souter had or even drift in that direction as other Supreme Court appointees of Republican presidents have. A White House official said Bush doesn't expect Roberts to "grow in office."

Bush advisers studied how the nomination of Souter came about. It wasn't that Souter, who'd served on the New Hampshire Supreme Court and, briefly, as a federal appeals court judge, misled his interrogators on the staff of the elder Bush. The problem was that the White House "didn't ask, 'Are you a conservative, why, or when did you become one?'" an aide to the current president says. "They didn't ask any of those questions." Those questions were asked of Roberts. "I'm glad we had Souter-phobia. If we hadn't asked these questions about judicial philosophy and the view of the court's role, the nominee wouldn't have been John Roberts."

Roberts is not a "stealth" nominee in the Souter mold. "We know a lot more about Roberts than was known about Souter," a Bush aide says. Roberts went through the confirmation process before, when he became a judge on the U.S. Court of Appeals for the District of Columbia. He was endorsed by much of the Washington legal community and by colleagues from the Reagan and first Bush administrations. The president received messages through intermediaries that conservative Justice Antonin Scalia felt Roberts would be a great addition to the High Court. At least Bush aides thought the messages were from Scalia.

Besides the Bush interview, Roberts had to pass another test, the Rove interview. Karl Rove, Bush's deputy chief of staff, and legal counsel Harriet Miers talked to the candidates for the court at length. Rove, too, was interested in finding out if Roberts was really a conservative and would remain one on the court. He came away convinced Roberts is no Souter.

But Roberts didn't have as vigorous a backer as Judge Edith Brown Clement did. Senator David Vitter of Louisiana and his wife Wendy attended a small dinner at the White House on June 30. They both recommended Clement as the type of conservative justice Bush was committed to nominating. Several weeks later, Vitter returned to the White House to meet with Rove and Miers. By then, Miers had already checked with the other senator from Louisiana, Democrat Mary Landrieu, to see if she would support Clement. She would, Miers said. But it wasn't enough. Roberts outshined Clement in the Bush interview.

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Absent a startling revelation, Roberts should win confirmation with relative ease. Still, he has to prove himself to several conservative Republican senators worried about a repeat of Souter. "I just don't know him," says Sen. Tom Coburn of Oklahoma. "I don't have any enthusiasm until I know someone. Personal integrity is the most important issue. If they don't have that, what they say doesn't matter."

Sen. Sam Brownback of Kansas says Roberts "doesn't seem to be a Souter." But he wants to be certain. "He'll be a free agent once he's on the court," Brownback says. He intends to question Roberts in Judiciary Committee hearings on "his view of the Constitution and the role of the courts." He has no doubt about Roberts's skill as a lawyer. Roberts has argued 39 cases before the Supreme Court. Brownback says a Democratic senator told him, "I may not vote for Roberts, but I'd hate to argue a case against him."

Sen. Jeff Sessions of Alabama favored Michael Luttig, a judge on the 4th Circuit U.S. Court of Appeals, to replace retiring justice Sandra Day O'Connor. But, loyal to the president, he calls Roberts a "fabulous nominee." Sessions says two issues will be important in the hearings. One is how Roberts treats the matter of precedent. Sessions says Roberts shouldn't be "too committed to not reversing precedent." The other is abortion. Roberts will be asked about his statement in a 2003 questionnaire that *Roe* v. *Wade* is "settled law." Sessions's view is he shouldn't preclude overturning that 1973 decision.

Now think about the 25-year yardstick that Bush applied in his first Supreme Court selection. It shows two things. Bush is looking to pick relatively young justices. Roberts is 50, so he could sit on the bench for two or three decades. And he wants justices who will turn the court to the right and keep it there for years. "A lot of people don't understand how much the president cares about the courts," says a Bush aide. Soon enough they will. ♦

Rumble in the Desert

Sudan's Darfur-style diplomacy.

BY JONATHAN KARL

Khartoum, Sudan

CONDOLEEZZA RICE realized something was wrong when she rushed into Sudan's presidential residence and found herself sitting virtually alone next to President Omar Hassan Ahmad al-Bashir. Her senior staff—including two assistant secretaries of state, Rice's top policy adviser, and the three-star general who travels with her—had been held at the gate. Bashir's strongmen had also blocked Rice's translator.

Sitting next to the president of a country you have accused of genocide is awkward under any circumstances. But imagine sitting there in silence because his people have detained your translator and most of your staff. Bashir speaks no English. Rice speaks no Arabic. And, bizarrely, Sudan's president did not have his own translator. Instead of her translator and her policy advisers on Africa, the only people with Rice were the two aides who had been riding in the spare limousine: Jim Wilkinson and Liz Lineberry. Wilkinson is a senior adviser, but Lineberry wasn't even supposed to be in the meeting. She usually waits outside, guarding the secretary's "baseball"—that is, her purse. In the absence of her usual entourage, Rice told Lineberry to stay.

Inside the meeting, the silence stretched on for several minutes, while outside Rice's translator, Gemal Helal, was growing irate. No meek foreign servant, Helal is the veteran of years of Israeli-Palestinian negotiations and has translated for presidents. And he's more than a translator; he's one of Rice's key advisers on Israeli-Palestinian issues. Finally, Helal started to walk away, directing a profanity at the guards (in Arabic, of course) and telling them that their president would have to meet with the secretary of state without a translator. The guards relented and jammed Gemal into one of Bashir's cars, rushing him inside the gate and to the meeting.

President Bashir's security guards were just getting warmed up. The rumble in Khartoum was widely portrayed as an incident involving Andrea Mitchell of NBC News, but long before the guards got around to roughing up Mitchell, they pushed around Rice's senior staff and several other reporters traveling with Rice. Ray Odierno—the formidable six-foot, five-inch, three-star Army general who orchestrated the capture of Saddam Hussein—had to power his way into the meeting, clearing a path for the two women in Rice's party (Constance Newman, assistant secretary of state, and Cindy Courville, an NSC official).

This initial scuffle especially irritated senior Rice adviser Jim Wilkinson. Wilkinson managed to get inside, but he had been roughed up on his way. He didn't stay in the meeting long, coming out to give the guard who shoved him a dose of Texas diplomacy, telling him, "If you touch me again, I'll knock you on your ass."

Wilkinson usually doesn't speak on the record, but this time he couldn't resist. "We frankly don't appreciate being manhandled at the door," Wilkinson said. "It's Diplomacy 101: You don't rough up your guests."

Jonathan Karl is senior foreign affairs correspondent for ABC News.

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This was not how things were supposed to go. President Bashir used his meeting with Secretary Rice to urge the United States to lift sanctions on Sudan and to reestablish full diplomatic relations (we haven't had an ambassador in Khartoum since 1997). To the Sudanese, the request seems perfectly reasonable. In fact, just two years ago, Sudan-U.S. relations seemed to be on a fast track toward normalization. The United States was brokering a historic peace agreement to end the country's two-decade civil war between the North and the South, and Colin Powell was talking about finally getting an ambassador back to Khartoum.

The North-South peace deal was signed last year, but in the meantime the government of Sudan started fighting a rebel insurgency in the western Darfur region by arming the so-called Janjaweed militias. The bloodshed horrified the world and made it impossible for the United States to lift sanctions. Instead of sending an ambassador back to Khartoum, Powell accused the government of genocide.

Because of the North-South peace deal, however, signs of progress slowly became visible. Rice—before her ill-fated meeting with Bashir—was even talking about a "new day" in U.S.-Sudan relations. On July 9, that peace agreement brought rebel leader John Garang and his people into the Sudanese government. This is not quite regime change, but Rice called the government "a changing regime."

Garang may be the most fascinating political figure in Africa today. A 1969 graduate of Grinnell College, Garang has a Ph.D. in economics from Iowa State University. He was part of Sudan's government until 1983, when he was dispatched to quell a rebel insurgency in the mostly Christian and animist south. Instead of fighting the rebels, he joined them, organizing a more formidable force to challenge Khartoum. In the 1980s, he allied himself with Ethiopia's Communist government, but for the last decade and a half, he has had strong support from the United States. Garang is now the first vice president of Sudan, a shift in power the United States believes offers the best chance to end the killing in Darfur.

But Rice's ill-fated meeting with Bashir shows the "changing regime" isn't changing too fast. At the end of the meeting, President Bashir's security detail agreed to let American reporters in for a quick photo opportunity with a strict "no questions" rule. When Andrea Mitchell tried to ask a question, she got roughed up and Bashir got a lesson in Public Relations 101: Don't go pushing around a high-profile correspondent when the television cameras are rolling.

Rice, with a look of stunned disbelief on her face, watched Bashir's men push the American reporters out of the room. As she was leaving for Darfur, she told the senior American diplomat in Sudan, "I want an apology by the time I land in Darfur."

The diplomat, John Limbert, is one of the 52 Americans who were held hostage for 444 days in Tehran. He passed on the message and, sure enough, a call came to Rice on her airplane 15 minutes before she landed in Darfur. It was Sudan's foreign minister calling to say sorry—something no Sudanese official has ever said about the killing in Darfur. ♦

Your Papers, Please

Will the Democrats go fishing for documents to sink Roberts? BY DUNCAN CURRIE

CALL IT the Estrada/Bolton strategy. One way Senate Democrats may seek to derail, or at least muddy, the confirmation of John Roberts to the Supreme Court is by asking for confidential case memos the nominee wrote while serving as deputy solicitor general under President George H.W. Bush. The current Bush administration will balk at any such request, citing attorney-client and executive privilege. Top Democrats will claim they can't properly judge Roberts without access to those records. And if the Bushies still won't release them? Democrats will put on long faces and claim they have no choice but to drag their feet.

This is all hypothetical, of course. But the use of (disingenuous) document-request tactics to hinder presidential appointments has a long pedigree. Such tactics are being deployed now to forestall John Bolton's nomination as U.S. ambassador to the United Nations. More to the point for Roberts, they are what blocked the ascent of another veteran of the solicitor general's office, Miguel Estrada, to the D.C. Circuit Court of Appeals.

Take the Estrada precedent first. President Bush tapped the Washington lawyer for an appellate court slot in May 2001, shortly before Vermont's Jim Jeffords bolted from the GOP and gave Democrats control of the Senate. Estrada critics could have gone any number of ways. But leading Democrats took a procedural tack. They asked to see internal position papers Estrada had penned during his time in the solicitor general's office. The White House refused, avowing the need for privacy in such matters.

On that score, the Bushies received succor from seven former solicitors

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general, including three—Seth Waxman, Walter Dellinger, and Drew Days—who served under President Clinton, and one—Archibald Cox—who served under President Kennedy. Along with Republicans Robert Bork, Charles Fried, and Ken Starr, they signed onto a June 2002 letter, drafted by Waxman, attesting to the sensitivity of documents prepared in the solicitor general's office:

> Any attempt to intrude into the Office's highly privileged deliberations would come at the cost of the Solicitor General's ability to defend vigorously the United States' litigation interests—a cost that also would be borne by Congress itself. Although we profoundly respect the Senate's duty to evaluate Mr. Estrada's fitness for the federal judiciary, we do not think that the confidentiality and integrity of internal deliberations should be sacrificed in the process.

Senate Democrats were undeterred. At a Judiciary Committee hearing on September 26, 2002, Chuck Schumer and Ted Kennedy pressed Estrada. "Knowing that you are a good lawyer and seeing you're a good lawyer is not enough," Schumer said. "I would be reluctant to support moving your nomination until we see those memoranda." Kennedy was less diplomatic. When Estrada said he'd "think about" the release of documents, Kennedy tersely replied, "Well, you'd better think about it."

Estrada made the most salient point. "If it were up to me as a private citizen," he told Schumer, "I would be more than happy to have you look at everything I've done for the government or in private practice." But it isn't that simple. The solicitor general represents the president before the Supreme Court. So while Estrada was lawyering for the solicitor general's office, the U.S. government was in effect his client. Those memoranda wouldn't be his to turn over even if he wished to.

The principles at stake here have deep common-law and constitutional roots, argues C. Boyden Gray, White House counsel under Bush I and now chairman of the Committee for Justice (a conservative counterweight to People for the American Way). Should the White House divulge confidential Justice Department memos, Gray says, "It would totally cut off any kind of internal debate." That is, lawyers in the solicitor general's office would be much cagier with their advice, knowing their private scribbles could become fair game in a subsequent confirmation fight. Gray draws a parallel to press freedom: "It's like asking [reporters] for their preliminary drafts."

Maybe. But it helped torpedo Estrada. And, so far, a similar ploy has kept John Bolton away from the U.N. His Democratic critics had a laundry list of gripes with Bolton (his alleged browbeating of subordinates, his low opinion of the U.N., his general hawkishness). But the ostensible justification for their ongoing filibuster is a quest for documents. Over his four years in the State Department, Bolton apparently made ten requests for the names of U.S. officials recorded in National Security Agency intercepts. Democrats suggest Bolton could have used the NSA info to further his turf wars at State (although State Department officials all told made around 500 such requests over the same period).

Schumer, perhaps the most aggressive Democrat on the committee, wasted no time in affirming that he would pursue this angle.

Thus their rallying cry: Fork over the intercepts, or else. "We've told them what we've wanted," Senate Democratic leader Harry Reid said on CNN last month. "If they want John Bolton as ambassador to the United Nations, give us this information. If they don't, there will be no Bolton." The White House hasn't budged. Absent a recess appointment, Bolton will remain in limbo.

Will Democrats try the Estrada/Bolton strategy on Judge Roberts? Sure sounds like it. Prior to the Roberts pick, the *Washington Post*'s Mike Allen reported Senate Democrats' three probable "lines of attack" on Bush's nominee. One: claim insufficient consultation by the White House. Two: paint the nominee as a right-wing ideologue. Three: demand the administration produce internal documents to shed more light on the nominee's record.

Bush obviated the first by meeting with Democrats. The second won't work, since Roberts boasts a gold-plated CV, a short paper trail on the bench, a bipartisan support network of legal heavyweights, and a venerable career in the Washington establishment. That leaves the third. Schumer, perhaps the most aggressive Democrat on the Judiciary Committee, wasted no time in affirming that he would pursue this angle. The very night Bush tapped Roberts, Schumer laid out "the threshold question": "Will he be forthcoming in both answering questions and making available documents about his previous record?"

The Schumer-Kennedy Democrats "were emboldened by Estrada," says a senior GOP Senate aide, and even "more so by Bolton." But Roberts presents a tougher target. For one thing, he's a higher profile nominee than Estrada. And unlike Bolton, he is hardly a partisan lightning rod.

Thus, Democrats' best hope of tripping him up may hinge on document requests. Asking for internal case memos from the solicitor general's office—memos they *know* the White House won't disclose—will enable Schumer & Co. to decry Bush's "stonewalling." It will turn the confirmation process into a debate over executive privilege, rather than a debate over John Roberts. Best of all, it's a strategy that makes the aggressor look like the aggrieved. Which may be the best Democrats can hope for in this case. ♦

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The India Syndrome

U.S. nuclear nonproliferation policy melts down.

BY HENRY SOKOLSKI

LAST WEEK, President Bush played a card that President Clinton and, before him, President Carter, had only toyed with: guaranteeing India, a nuclear weapons state that has not signed the Nuclear Nonproliferation Treaty (NPT), full access to civilian nuclear energy goods. The president did this in the name of great power politics: Court India, a rising power, to help counterbalance China. But in doing so, he kicked to the side decades of nonproliferation policy and international agreements, while also pledging to ask Congress to overturn existing U.S. law, which prohibits such assistance.

In essence, President Bush promised visiting Indian prime minister Manmohan Singh to treat India as if it were Great Britain or France—giving New Delhi open access to U.S. and international nuclear fuel and reactors, advanced U.S. nuclear technology, and the freedom to make as many nuclear weapons free from international inspection as it wants.

Indian officials, of course, wanted more: They demanded that the United States explicitly recognize India as a nuclear weapons state under the NPT. After wrangling with the Indians, who tried to get this specific language into the U.S.-Indian joint statement (delaying its release for several hours), senior White House officials finally dug their heels in and said no.

But why? The White House had already given in on every other Indian nuclear demand. If the United States was fully prepared to treat India as if it were one of the original five nuclear weapons states that signed the NPT, why not say so?

Part of the answer lies with the treaty itself: No nuclear weapons state other than the original five that signed the NPT in 1968 can formally be granted that same privileged status without every other NPT member agreeing to so admit them. On this, U.S. officials knew they could not deliver.

This might seem like a relatively minor point, except that it reflects the underlying rationale of the NPT that nuclear proliferation would be controlled by states foregoing weapons in exchange for access to controlled and monitored civilian nuclear power technology. Treating India as though the rules of the international nuclear proliferation regime don't apply to it can't help but make stemming proliferation even more difficult today and in the future.

For example, China has said it wanted to sell Pakistan two reactors earlier this year but Washington objected, since this would violate guidelines forbidding such sales to non-NPT states that refuse to open all of their nuclear facilities to inspections. Is the United States now willing to look the other way? And what about Israel? It has long sought advanced computers for its nuclear weapons-related research institutes. But those same guidelines have banned such sales. Is the United States now willing to let such sales proceed? Even if countries like Egypt would take this as an invitation to begin nosing their way out from under the NPT regime (as Egypt indeed recently threatened to do)?

Then there is Iran. How can the United States maintain or increase its leverage over Russia, Germany, France, and Britain to keep them from appeasing Iran's "civilian" nuclear ambitions if we are encouraging international civilian nuclear commerce for India? New Delhi never signed the Nuclear Nonproliferation Treaty, has tested a bomb, and refuses to open all of its civilian nuclear facilities for inspection. As yet, Iran is not guilty of any of these.

And what of Brazil, Libya, Argentina, Ukraine, and South Africa—all states that once had nuclear bombs or weapons programs but chose to give them up and sign the NPT in exchange for international civilian nuclear cooperation. Will they think they made a mistake? If we make good on our nuclear offers to India, how likely is it that they (not to mention other nuclear dabblers like Japan, Taiwan, South Korea, Algeria, and Saudi Arabia) will all remain passive?

Finally, there's the question of how discriminating the United States and its friends are going to be in sharing nuclear power reactors, with all of their attendant proliferation risks (hazards that Secretary of State Condoleezza Rice cited earlier this month when she announced that the 1994 reactor deal with North Korea was officially dead). Backers of reactor aid to India insist nuclear power is a timely fix for India's oil and natural gas consumption, coal pollution, and global warming. But if it is, it is hard to see why anyone should be deprived of nuclear power.

No one seems to be asking the basic question of whether doing all this damage to the nuclear nonproliferation regime is the best way to tackle India's energy woes. The fact is, about half of India's energy now comes from the burning of cow dung and twigs. The best way to fix this—in the name of sanitation and global warming—is to go with what's most economical. Given the location and the consumers involved, that means bypassing the difficult, costly task of hooking them all up to India's incomplete electrical grid and instead deploying small, decentralized energy systems (e.g., windmills, small hydro, and biomass). The next biggest chunk of India's energy consumption, roughly a third, consists of oil used to power cars and trucks—vehicles that are unlikely to tap into electricity-generated fuel for decades.

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That brings us to electricity, about 20 percent of the energy India consumes. An overwhelming proportion of this—60 to 80 percent—comes from the burning of coal. Coal's dominance in India is unlikely to change soon. (India sits on the world's third largest reserve.) As the *Wall Street Journal* recently noted, the quickest way for India to get more and cleaner electricity is for it to mine, transport, and burn coal more cleanly.

And what about nuclear power? It provides less than 3 percent of the electricity India consumes. Why is the nuclear contribution so small? It is hobbled by government design. The Indian government walled off its civilian nuclear program from private or local ownership, as well as from foreign investment and management. As a result, India's civilian nuclear program is exceedingly expensive, egregiously mismanaged, and technically overambitious. None of this—no matter how much help the program gets from the outside—is likely to change anytime soon.

The realist rejoinder to these points is that, however slight the economic merits of nuclear aid to New Delhi might be, New Delhi wants the help, so we should give it. If we want to keep India from buying energy from Iran, and have it counterbalance China, nuclear aid, they argue, is simply the price of doing business.

This sounds plausible, except for one thing: The Indians are quite clear that they are not about to cooperate. Good relations with Iran are critical for India to gain access to affordable natural gas and to fend off terrorists from Afghanistan. China is a country India wants to gain investment from, not someone it wants to ruffle, least of all by acting as Washington's geopolitical pawn. There surely is no Indian desire to ramp up nuclear or military production to match Beijing weapon-for-weapon.

This suggests that while it may make sense to help India grow its economy, using New Delhi as a strategic fix for a rising China is hardly in the cards. Indeed, until India sees that it is in its interest to align itself firmly with the United States, all that Washington will get from New Delhi is a list of goodies that it wants as it plays the role of the newest pretty girl on the block.

The irony in all of this is that one of the reasons India sought relief from the current set of nuclear rules is that they are actually working. Specifically, the French, who run most of the uranium mines in Africa, have been blocking sales of fresh uranium to non-NPT states like India. The Russians, in a fit of law-abidingness, recently told New Delhi they could no longer supply it with nuclear fuel for its two light water reactors at Tarapur. The net result has been that India has had to run its reactors less to save fuel. That the U.S. offer to India has undercut the French and Russians' adherence to the rules is more than a bit awkward.

What then should we do? First, recognize that with presidential initiatives of this sort, taking it all back isn't really much of a political option. Still, the United States can and must assure the world that it will in no way weaken existing nuclear restraints in creating the legal nuclear easements it promised India. Congress and the administration, at the very least, must insist that all previous legal nonproliferation understandings regarding U.S. nuclear transfers to India will continue to be upheld. U.S. prior consent, for example, must continue to be required, as it always has, before any U.S.-origin spent fuel can be reprocessed.

Second, if we are to take seriously India's pledge to behave just like the other nuclear weapons state members of the NPT, India's receipt of nuclear benefits should be conditioned on its behaving as if it were one. On this point, India has a ways to go, and we should not tire of pointing this out. Every one of the NPT's nuclear weapons states—Russia, China, France, Britain, the United States—for example, has stopped making fissile materials for bombs and has so declared. All but one—China—have declared at least some portion of their military fissile stockpiles to be in excess of their military requirements. India has been asked to do likewise, but has refused. It claims to support adoption of a formal treaty ending such production, knowing full well that this treaty has been under negotiation for years and is unlikely ever to be adopted. Neither the United States nor other nuclear supplier states should settle for this.

Similarly, every NPT nuclear weapons state has declared that all of its reactors that are connected to an electrical grid are civilian facilities subject to international inspections. India continues to mix its dedicated military facilities and its power reactors but has now pledged to separate them. At a minimum, we and other nuclear supplier states must insist that New Delhi declare that any reactor that's already hooked to India's electrical grid is a civilian facility. Following the lead of all other NPT nuclear states on this point should be made a condition to gaining free access to controlled nuclear goods.

Finally, as a practical matter, a majority of NPT weapons states—the United States, France, and Britain—allow foreign or private investment in, ownership, and management of their civilian nuclear utilities and facilities and have nuclear liability insurance arrangements sufficient to secure such investment. It would be a grave mistake for the United States to demand anything less of India.

In the best of worlds, the Bush administration should never have opened this nuclear door. The geopolitical and economic benefits to be gained are uncertain, while the costs to our nonproliferation policies will be high—and potentially dangerous. But the fateful step having already been taken, it is imperative that the administration and Congress make the best of it by insisting that, if India is to be treated as if it were an NPT nuclear weapons state for the purpose of transferring nuclear goods, it must at least live up to its past nonproliferation commitments and behave as other responsible nuclear weapons states do. ♦

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They're Voting in Afghanistan

But democracy still has a long way to go.

BY ELLEN BORK

Kabul

U.N.-SUPERVISED ELECTIONS for the lower house of Afghanistan's national assembly, the Wolesi Jirga, are less than two months away. The September 18 poll, delayed repeatedly, is one of the last remaining tasks agreed on by Afghans and the international community at a conference near Bonn, Germany, months after the overthrow of the Taliban regime.

On one hand, election officials cite a high level of participation by candidates and voters, and advanced preparations, despite a delay in delivery of significant funds pledged by international donors. On the other hand, the September elections will be much more complicated than the successful presidential election of October 2004, both logistically and politically.

The voting system is obscure and designed to inhibit the development of political parties. Under this little-used system known as the Single Non-Transferable Vote (SNTV), votes are not carried over from the leading candidate to affiliated candidates, as happens in proportional representation systems. In a country like Afghanistan, where literacy and political development are extremely low, this makes it difficult for parties to tell their supporters how to vote.

That, combined with the decision not to put party symbols on the ballot, will make the ballot confusing and unwieldy. There is no voter registry, fake voter cards are easy to come by, and a sensible decision to count the votes at the provincial level will create difficulties for monitoring and transporting the ballots to centers that may be days away from the polling stations.

If Afghans are lucky, fraud, logistical nightmares, and budget shortfalls will be the least of their problems. An upsurge in activity by the Taliban, who are concentrated in the south and the east, makes these areas particularly insecure and often inaccessible to NGOs. Local government officials and pro-government clerics have been assassinated, as have candidates and election workers. NGO workers have also been targeted and operate under strict security, even in Kabul. NATO plans to add 3,000 troops to enhance security for the elections. There is particular concern that suicide bombings, relatively rare in Afghanistan, will become more common. That, along with the death in June of 16 U.S. servicemen in a helicopter trying to rescue a team on the ground, three of whom were killed, has caused this summer to be called the most violent since the end of the war. According to Afghan and administration officials, things will get worse as the election approaches.

They may get worse still after the election. Especially if, as some political figures are already suggesting, losers reject the results. New democratic institutions challenge the interests of powerful figures with notorious pasts, including ties to armed groups and drug trafficking. Alternatively, the results might bring to power people who have no use for anti-corruption and anti-narcotics enforcement, not to mention the creation of war crimes tribunals or a truth commission to address 30 years' worth of atrocities.

Afghanistan's past has so far taken a back seat to the present, despite the high priority Afghans place on justice for crimes committed during the war and upheaval. Thick reports by human rights groups highlight familiar names, including some in senior positions in government. Afghanistan's constitution bars convicted war criminals, or any criminals, from sitting in the national assembly or serving as government ministers. The absence of a functioning judicial system has made that provision virtually meaningless.

Instead, the Electoral Complaints Commission has become a focal point for Afghans' grievances. At a news briefing (reported by Reuters), the Canadian chairman explained that the commission could not act to exclude candidates unless they had been convicted of crimes. "We are not a criminal court, nor are we a transitional body," Grant Kippen said by way of explaining how a review of over 1,000 complaints led to no exclusions on the basis of criminal conduct. Just 17 candidates were barred for links to armed groups, a number that many think reflects a tacit decision not to rock the boat in advance of the election.

The government is reportedly considering proposals for a tribunal or truth commission. The lack of action, however, and the broader strategy of bringing some of Afghanistan's most notorious figures into government, has created skepticism. A human rights activist criticized a recent reshuffle of Kabul-appointed provincial governors with unsavory reputations as a "chess game." A politician allied with a coalition of small democratic parties says secular democrats are being marginalized, citing the influence of Islamic fundamentalists at the national level, in governorships, and at the Supreme Court. He worries

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that the window of opportunity for advancing democracy is closing. September's elections, he says, are "our best chance. We don't want to miss this."

Those are high expectations for the elections, not to mention for the Wolesi Jirga itself. No matter how well Election Day goes, the members of the new assembly will face a daunting constitutional mandate: to approve or reject within 30 days hundreds of executive decrees by which the country has been administered up to now. None of the new members will have served before in an elected body. In the absence of well-formed political parties and established legislative procedures, and with an uncharted relationship with the executive, gridlock or chaos is a distinct possibility. And that's at the national level. Local administration will continue to be plagued by armed groups operating beyond the reach of the national government.

The stakes, for Afghans and for the international community—especially the United States—are high. Without an understanding that the elections carry as much peril as promise, the great and worthwhile project of democratic nation-building in Afghanistan does not have a chance. ♦

Mugabe's Last Stand

He's destroyed his country; now he's going begging. BY ROGER BATE

ZIMBABWEAN PRESIDENT Robert Mugabe is a man of contradictions. He held an election to show the world that Zimbabwe was a modern democracy but sent his army to run the polling stations and make sure everybody voted the right way. He fancies himself a hero in the continuing struggle against Western imperialists, but his favorite saying is reportedly: "Absolute power is when a man is starving and you are the only one who can give him food."

Mugabe should know. His own desperate clinging to power has brought the once buoyant Zimbabwean economy near collapse, so that now even he cannot feed the starving. He has turned to his old comrade from the anticolonial wars and the leader of his strongest neighbor, President Thabo Mbeki of South Africa, to request a billion-dollar loan in order to buy emergency food and fuel supplies for the people he has led to ruin.

Even in this there is an element of blackmail. For if South Africa can't help—or, more likely, Mugabe refuses to comply with the condition attached to a South African loan, that he stop attacks against opposition supporters—he has another card to play. At this writing, Mugabe is off again to Beijing to ask his new friends the Chinese for the money. They will probably pay the billion dollars, in return for what remains of Zimbabwe's once highly profitable tobacco industry.

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But this outrageous bluff may come too late to save him. His slum-clearance program, Operation Murambatsvina—variously translated from Shona as "Clean up the rubbish" and "Remove the filth"—is Mugabe's latest attempt to break the solid support enjoyed by the opposition Movement for Democratic Change, particularly in the major cities of Harare and Bulawayo. The main features of the campaign are the bulldozing of townships, the burning and looting of property, and the corralling of people in the clothes they stand up in to be trucked to unsanitary holding camps outside the cities.

Archbishop Pius Ncube of Bulawayo, fresh from an audience with the pope in Rome, was in Britain recently to lobby G8 leaders. The archbishop continued his forthright public criticism of Mugabe and of those doing too little to stop his depredations. Ncube provided a full report and eyewitness account of the results of Operation Murambatsvina. Thousands are now dying weekly of AIDS, malaria, and malnutrition. Food supplies are almost out, and there is no fuel left in most parts of the country.

President Mbeki, who also met with G8 leaders, may finally have been persuaded that he can no longer watch and wait for the octogenarian Mugabe to die. Last week, days ahead of a U.N. report expected to be highly critical of Zimbabwe and possibly to call for Security Council action on Zimbabwe's abuse of human rights, Mbeki sent his deputy to strongly advise Mugabe to stop persecuting his people and to start talking to his political opponents, sources in both coun-

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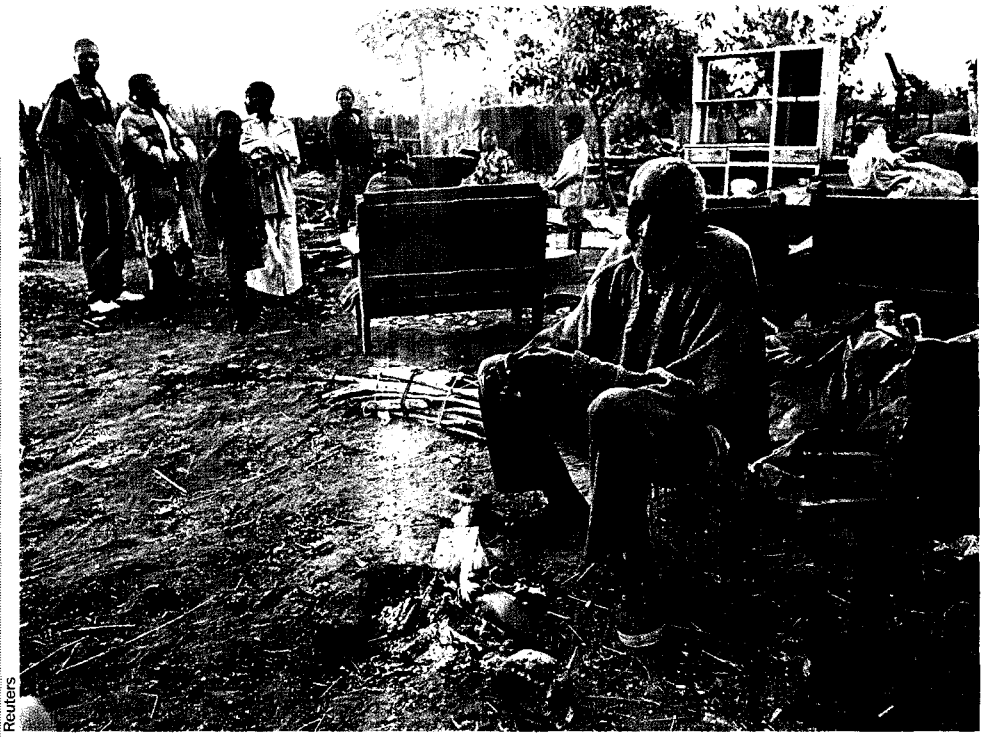
tries say. As one diplomat put it to me: "We're approaching the end game on Zimbabwe, and Mbeki wants to make sure he's not on the wrong side." Pressure has also come from Nigeria's president, Olusegun Obasanjo, to bring Mugabe to the negotiating table.

Moving millions of people into the countryside ensures that they are utterly reliant on government-controlled food aid for survival. But there may also be a more subtle motive. Many squatters now being forced out of towns and shunted into the country are former farm workers made redundant and homeless by seizures of white-owned farms. Mugabe is perhaps hoping they will soon return to work on farms now occupied by yet another set of tenants—his new Chinese friends, who are increasingly replacing whites as business owners and producers.

Mugabe is claiming that his actions are intended to clean up the black market in goods and services and the illegal trade in foreign currency, which he blames for causing the downfall of the economy. Indeed, there is a black economy, but this is a result of economic collapse, not its cause. Official unemployment is around 75-80 percent, so many Zimbabweans work informally. Many also receive foreign currency sent by friends and relatives working abroad. Most of this money is untaxed and does not pass through banks, but officials estimate it amounts to 60 percent of the economy. Since the demise of Zimbabwe's export-earning tobacco production, to say nothing of its tourist industry, the country is desperate for hard currency. It seems inevitable that Zimbabwe will default on an international loan, which will probably cause the IMF and World Bank to expel the country from its list of recipients any day.

The G8 leaders did not discuss Zimbabwe. Nevertheless, this economically and politically insignificant country may hold the key to Africa's future development; for if African leaders don't respond to the crisis in Zimbabwe, how can they claim to respect human rights, democracy, or freedom, or be considered worthy of support from the world's successful countries? Such criticism probably stung President Mbeki during his trip to Gleaneagles. Now he apparently wants to be seen to be taking action on Zimbabwe, all the more since he won't want to publicly oppose any U.N. action.



Reuters

A man sits in front of his destroyed home in a Zimbabwe squatter camp, June 30, 2005.

Mugabe readily points to Western protestations as evidence that Zimbabwe is under threat of recolonization. Hence his vilification of "Tony gay Blair of the United gay Kingdom," as he elegantly puts it. Pressure must come from his peers and neighbors, but they too suffered from imposed minority white rule, and they are currently beholden to Westerners, including their former oppressors, for handouts. And so they are loath to criticize Mugabe, the former anticolonial hero—an invidious situation all round. But the parallels between Mugabe's actions now and those of apartheid-era South Africa and Zimbabwe under Ian Smith are strong, and it was thought that the outside world should intervene then.

The Zimbabwean opposition, the Movement for Democratic Change, led by Morgan Tsvangirai, has asked for a transitional government made up of his MDC with Mugabe's ruling ZANU-PF party, and backed by Western aid and investment. Sources in South Africa say that President Mbeki is now backing this plan, and has persuaded Mugabe to come to the table, but Mbeki cannot be trusted to maintain his support, and Mugabe could easily renege on any deal. Even during initial negotiations, the South African Broadcasting Corporation announced that Mugabe was stepping up his attacks against the richer parts of the country where the opposition is dominant. Negotiators tell me they suspect Mugabe is only buying time, waiting to be given enough food to stop rural revolt, enabling him to walk away from the table and into the arms of the Chinese.

In theory, the U.N. Security Council could act to end the violence, but with a Chinese veto threatened, that is unlikely. It falls then to the United States and the United Kingdom to push military intervention, for the sake of the people of this formerly successful African state. The explorer David Livingstone once said the sight of the mist rising out of Zimbabwe's Victoria Falls gorge was so beautiful it stopped the angels in their flight. Lately, the dark, acrid smoke rising from burning homes will have caused any passing angels to hasten on their way in horror. ♦

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Reading Roberts's Mind

He'll certainly be better than O'Connor. But how much better?

By Terry Eastland

So, just who is John G. Roberts? His brainpower, legal experience, and character duly recognized, what is his judicial philosophy? What is his approach to judging—to interpreting and applying the Constitution and other federal law? What kind of jurist will he turn out to be—20, 30 years hence?

One place to look for the answer is in Roberts's record as a federal circuit judge. Appointed two years ago to the U.S. Court of Appeals for the D.C. Circuit, Roberts has participated in some 200 decisions and 100 orders. Of the 200 decisions, almost all were unanimous, according to a review by Anisha Dasgupta and Brian Fletcher (posted at *www.sctnomination.com/blog*). Roberts wrote the majority opinion in about 40 cases, drawing very few dissents. He also wrote three concurrences and two dissents.

Most of his cases involved technical questions of administrative law and proved relatively noncontroversial. He has yet to sit on a big social-issue case—one involving, say, abortion, same-sex marriage, or establishment of religion. Perhaps his case of most national significance is *Hamdan* v. *Rumsfeld*, in which he and two other judges voted to affirm the validity of military commissions under the 2001 congressional resolution authorizing the president to "use all necessary and appropriate force" against al Qaeda, and to uphold the president's judgment that the Geneva Convention does not apply to members of al Qaeda. Some of Roberts's writing is notable.

In a case holding that the Drug Enforcement Administration had wrongly blocked the importation of ephedrine, which is used to treat asthma, Roberts, in a concurrence, took issue with the majority's reasoning. Arguing for a narrower and "effectively conceded basis" for disposing of the case, he invoked "the cardinal principle of judicial restraint—if it is not necessary to decide more, it is necessary not to decide more." Regarding the majority's rationale, he said, "I cannot go along for that gratuitous ride."

Roberts dissented from a decision holding that the secretary of labor went beyond her statutory authority by issuing certain reporting obligations for labor organizations. Contending that the congressional delegation of authority was broad enough to encompass the secretary's action, Roberts chided the majority for applying "the very antithesis of deferential review."

Roberts wrote for a unanimous panel upholding a lower court judgment that the arrest, search, handcuffing, and detention of a 12-year-old girl for eating a single French fry in a Washington Metrorail station did not transgress the Fourth and Fifth Amendments. Roberts began his opinion, "No one is very happy about the events that led to this litigation," noting that the district court described the policies leading to her arrest as "foolish" and that indeed the policies were changed after "those responsible endured the sort of publicity reserved for adults who make young girls cry." But foolish policies were not necessarily unconstitutional. "The question before us," he wrote, "is not whether these policies were a bad idea but whether they violated" the Constitution, and "we conclude they did not."

Roberts dissented from his court's refusal to rehear a panel decision on the scope of the commerce clause. At issue was a judgment upholding an order of the Fish and Wildlife Service as a constitutional regulation of interstate commerce. The agency told a developer that it must remove a fence from its own property in order to accommodate the movement of arroyo toads. Roberts faulted the panel's decision for failing to ask—as he said it should have under recent Supreme Court precedents—whether the movement of a toad, a seemingly noncommercial activity that occurs entirely within the state of California—can be said to be interstate commerce. "The panel's

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approach in this case leads to the result that regulating the taking of a hapless toad that, for reasons of its own, lives its entire life in California constitutes regulating 'Commerce . . . among the several States.'" Roberts also noted that the panel's decision was in conflict with another ruling in the circuit, making it doubly necessary for the full court to take up the case.

The sample size from the D.C. Circuit is small, yet it points in certain directions. Roberts seems to have a proper understanding of the executive power that Article II vests in the president. Whether he agrees or not with the Supreme Court's federalism precedents—and his opinion in the arroyo toad case does seem sympathetic to them—he is certainly willing to apply them, as a lower-court judge must. At the same time, Roberts defers to agency judgments so long as there is sufficient congressional authorization. His respect for the separation of powers is such that he is unwilling as a judge to condemn as unconstitutional merely bad ideas embraced by one of the other branches. Roberts's conception of judicial restraint also encompasses a preference for a narrower ground of decision unless a broader one is truly necessary. Roberts's own writing is restrained, for it is marked by its lawyerly precision and its avoidance of grandiose or strident pronouncements. It is sometimes dashed with humor, as witness the judge's reflection on that hapless toad.

Another place to look for clues about Roberts's judicial philosophy is in the work he's done as an appellate lawyer. After Harvard (he graduated in three years), Harvard Law (he was editor of the Law Review), clerkships first with federal circuit judge Henry Friendly and then with Associate Justice William Rehnquist, and jobs advising Reagan's first attorney general and then Reagan and his White House aides, Roberts took a job at a prestigious Washington law firm. There he began to establish a reputation as one of the nation's finest appellate lawyers. In 1989, Roberts returned to the Justice Department, where he worked as principal deputy solicitor general under Kenneth Starr. In that capacity, of course, he remained an appellate lawyer, his client now the government, as he briefed and argued cases in the Supreme Court. In 1993 he returned to private practice, leaving two years ago when the Senate finally, and by unanimous consent, approved his nomination to the D.C. Circuit. (Roberts, it bears noting, was in the first batch of judges Bush nominated in 2001, his nomination not moved until after the Republicans captured the Senate in 2002. Earlier, in 1992, the first President Bush had tapped Roberts for the D.C. Circuit, but the Democratic Senate had not been inclined to act on the nomination as Election Day approached.)

Roberts has participated in cases involving a wide range of subjects: administrative law, admiralty, antitrust, arbitration, banking, bankruptcy, civil rights, constitutional law, the environment, federal jurisdiction and procedure, the First Amendment, health care, Indians, interstate commerce, labor, and patent and trade law. He has definitely had his share of big, controversial cases, especially when he worked in the first Bush administration. As deputy solicitor general, he helped prepare the government's briefs in *Rust* v. *Sullivan*, *Lee* v. *Weisman*, and *United States* v. *Eichman*, among other high-profile cases. In *Rust*, the Court agreed with the government's position that regulations prohibiting family-planning services in receipt of federal funds from advising on abortion were not a violation of the free speech clause. The brief also reminded the Court that the government remained of the view that the abortion right announced in *Roe* v. *Wade* had no basis in the text, structure, or history of the Constitution. In *Lee*, the government argued, unsuccessfully, that prayers at a public school graduation ceremony were not an unconstitutional establishment of religion. And in *Eichman*, the government argued, also unsuccessfully, that a federal law against burning the American flag did not violate the free speech clause.

During his confirmation hearing two years ago, Roberts said that no one should infer from the views of his clients what his own views might be. That is a fair point, and extends even to his time in the solicitor general's office. For while it is surely true that Roberts, a political appointee, was at least in broad sympathy with the legal and policy goals of the Bush administration, it would be wrong to infer—to take the most notable case—that the statement about *Roe* in the *Rust* brief reflected his own view of *Roe*. It might, or it might not. Roberts is nowhere on the record on *Roe*, so far as anyone can determine. His appellate practice is not a very good place to look for clues about his judicial philosophy.

Roberts told the committee that his practice "has not been ideological in any sense. My clients and their positions are liberal and conservative across the board. I have argued in favor of environmental restrictions and against takings claims. I've argued in favor of affirmative action. I've argued in favor of prisoners' rights under the Eighth Amendment. I've argued in favor of antitrust enforcement. At the same time, I've represented defendants charged with antitrust cases. I've argued cases against affirmative action." Roberts implored the committee to look "at cases on both sides" of an issue and "see if the professional skills applied, the zealous advocacy is any different." Roberts conceded that "that's not judging . . . but it is the same skill, setting aside personal views, taking the

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precedents and applying them either as an advocate or as a judge."

While the skill of setting aside personal views and enforcing the law lies at the heart of sound judging, there is much more to it than that, especially for a Supreme Court justice. Lower court judges work with the precedents of their own circuits, and of course they are bound by the decisions of the Supreme Court. Justices, by contrast, make the precedents governing the courts below by interpreting statutes and the Constitution. Moreover, they can overrule their own decisions. Roberts's years as an appellate lawyer seem useful mainly for understanding his considerable professionalism—and not for discerning how he might interpret and apply the Constitution.

Which brings us to another way to discover Roberts's views on such matters: by asking him directly about cases already decided. Two years ago Judiciary Committee Democrats, with Charles Schumer taking the lead, tried to get Roberts to discuss Supreme Court cases. The effort failed. "I have opinions about particular decisions," Roberts told Schumer in one exchange. "Probably every decision I read, I have an opinion whether I think it is good, bad, or—." At which point the eager and voluble Schumer interrupted, apparently unaware that Roberts had effectively stated that his mind is locked in, rendering judgment, whenever he reads a judicial decision. Now that Roberts has been tapped for the High Court, Schumer remains insistent that he declare his "opinions about particular decisions." That's not going to happen.

During the hearing, Roberts laid out his reasons for what might be called nominee restraint. A nominee who offered personal views of the Court's precedents in the confirmation process would undermine the independence and integrity of the judiciary, he said. Those important qualities are ensured by the assumption that "judges come to the cases before them unencumbered by prior commitments beyond the commitment to apply the rule of law and the oath that they take."

When Schumer asked how it was any different—was there not also harm done to the judiciary?—when litigants go before the Supreme Court knowing that some justices have opined in previous cases in such a way as to indicate opposition to their arguments, Roberts said that it was different, precisely because the confirmation process is not the judicial process. "The concern is that you are giving commitments, forecasts, hints, even at the extreme, bargains, for confirmation," whereas, in the judicial process, "you are deciding a particular case and stating your reasons for it." If a nominee gave in effect "a prior commitment" as to how a case should be decided, that would be wrong, Roberts said, and it would "have a distorted effect on how that judge will appear to parties appearing before him." Roberts was firm in drawing this line, and Schumer concluded by conceding how good a lawyer he is—"far better than I would ever be."

It is hard to imagine what might compel Roberts to change course and discuss a decision—unless, as was the case with Ruth Bader Ginsburg in 1993, in a speech or article he has said something about a ruling. Ginsburg had criticized *Roe*'s rationale in a law review article, and thus felt compelled to reiterate, when asked about the article during her hearing, what she had said. But she declined to offer an opinion about *Planned Parenthood* v. *Casey*, which sustained "the essential holding" of *Roe*. As I write, three days after the announcement of the nomination, the media having pursued every detail about Roberts, it appears that he has nowhere—either in print or a speech, on the air, or in cyberspace, for that matter—offered any "opinions about particular decisions."

In his confirmation hearing, Roberts did offer some views, not about decided cases, but about judicial philosophy. Because he was nominated to a lower court, he emphasized his obligation to follow Supreme Court precedents. But he also seemed to endorse a way of approaching the task of interpreting the Constitution. "I do not think beginning with an all-encompassing approach to constitutional interpretation is the best way to faithfully construe the document," he said. He said that the Court itself didn't have such a philosophy, but he also seemed to think that the Court was right not to have one. He said he didn't feel comfortable with labels like originalist, textualist, or literalist, and he said different constitutional provisions call for different interpretative approaches. "You have a very different approach in saying how you are going to give content to the Fourth Amendment prohibition on unreasonable searches and seizures. That's one thing. It doesn't mean that you apply the same approach to a far more specific provision like the Seventh Amendment," which preserves the right of trial by jury in suits at common law.

Doubtless, as the confirmation process unfolds, Roberts will be asked to expand upon his varied approaches to constitutional interpretation. And about statutory interpretation, specifically whether he would consult legislative history in determining the meaning of a statute. And about how he would read the Court's precedents—narrowly or broadly. And the circumstances under which he might be willing to overrule a case he thought wrongly decided. Nor would such questions threaten judicial independence and integrity. The answers might tell us more about the man likely to be our newest justice.

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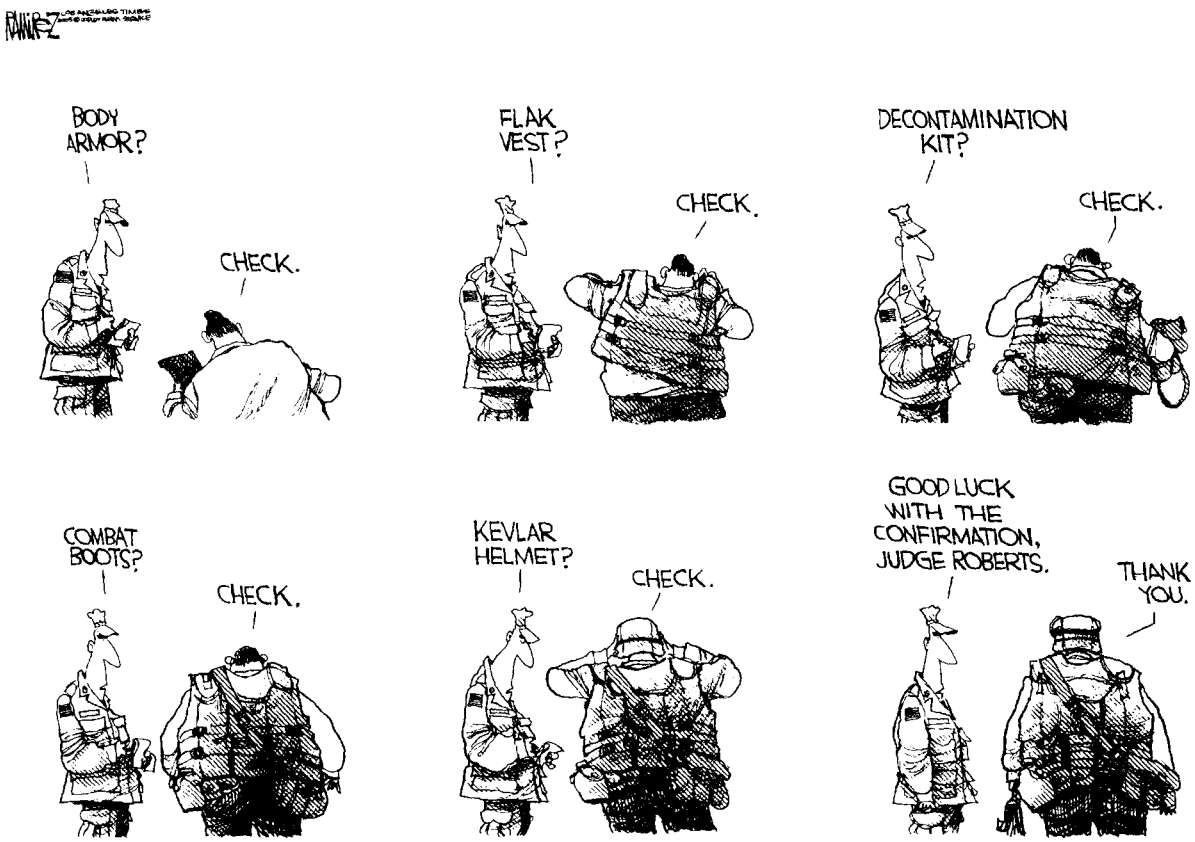
In choosing this nominee, Bush necessarily chose to pass over the others on his short list. There was more risk in choosing Roberts than in picking some others on that list, notably J. Michael Luttig, a federal appellate judge of roughly the same age but with many more years of service than Roberts. One reason presidents look to the federal appeals courts for justices is that the judges on those courts are not representing others but indeed making their own decisions, which constitute the best evidence of how the individuals might think about the law and might perform on the Supreme Court. Luttig would have come with less risk simply because, tested for so much longer, his record is more emphatically that of someone who practices the approach to judging Bush says he wants in his Supreme Court nominees. The extra risk associated with the Roberts choice might not matter much if another vacancy occurs in the next year or two and the president chooses Luttig or someone like him. But if it turns out that Bush has only this one opportunity, then the question of the choice not made could come back to haunt him—just as the choice of David Souter, in 1990, has his father.

That helps explain conservative misgivings about Roberts. These are seldom expressed publicly—with Ann Coulter the loud exception. In Roberts's defense, it might be said that he is surely not oblivious to the pitched ideological battles of the past two decades, having lived in Washington all of that time—he knows what is at stake in the courts. And, being a lawyer's lawyer, he could help the Court become more rigorous in its reasoning. That would be a positive development.

It's hard to see Roberts writing a weak-as-water opinion of the sort O'Connor penned for the Court two years ago in sustaining admissions preferences at the Michigan Law School. Likewise it is hard to imagine Roberts abiding the religion-clause chaos to which O'Connor made major contributions; likely he would, like his former boss Rehnquist, strive for doctrinal clarity. And it is hard to envision Roberts buying into such pretensions to supremacy as came from O'Connor, Souter, and Anthony Kennedy in their dismaying joint opinion in *Planned Parenthood* v. *Casey*. At the same time, it is easy to imagine Roberts—who has advised an attorney general and a president, and argued the executive's position in the Supreme Court—being especially aware of the importance of the executive power, at a time when terrorists still threaten America and the world.

In short, John G. Roberts may prove an excellent choice. To say that time will tell is, of course, a cliché. But with a nominee for the Supreme Court, it always does. ♦



Michael Ramirez

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Letter from Londonistan

In the war on terror, Britain still thinks it's 1999

By Irwin M. Stelzer

London

Myths are not the stuff of which sensible policy is made. So it is important to scotch the myth that Britain and America have similar and equally effective responses to the terrorist attacks they have suffered. The hard fact is that America has decided that it is engaged in a war, while Britain has decided that it is confronted with what the leader of the Tory party (historically the foreign policy tough guys) calls a "criminal conspiracy" and the *Economist* calls a "'war on terror,'" complete with quotation marks. Put differently, 7/7 has evoked a policy response very different from 9/11.

It is, of course, true that the citizens of New York and London reacted similarly to the attacks on them: with remarkable courage and heightened civic solidarity. But similar reactions by individuals caught up in the terrorist storm do not necessarily make for similar reactions by governments. President Bush responded to the destruction of New York's World Trade Center by proclaiming through a bullhorn, "The people who knocked these buildings down will hear from all of us." And they did—the Taliban no longer control Afghanistan. Tony Blair, a stalwart when confronted with the idea of taking the attack on terror to wherever terrorism flourished, responded to the bombing on London's tube with eloquent appearances before the television cameras and the House of Commons, by convening meetings with leaders (although exactly who they lead remains uncertain) of the Muslim community to enlist their aid, and with his ministers to begin preparation for legislation that will be introduced, but not until some time in October, after the long, leisurely summer parliamentary recess. Bush critics wish that the president possessed Blair's eloquence; Blair critics wish that the prime minister possessed Bush's willingness to act.

One reason for the widely different responses is that America was attacked by foreigners, whereas Brits were horrified to learn that they had been attacked by fellow citizens. Americans know it is "us" against "them," whereas Brits know that "they" are also "us." Pete Hamill, that astute observer of New Yorkers, had it right when he wrote in his wonderful *Downtown: My Manhattan*, "Where I come from, the rules were relatively simple. . . . Don't look for trouble, because in New York you can always find it. But don't back off either."

As Robert Conquest once observed, "Our cultures, our histories, grasp us with a thousand invisible fingers." British history and culture are different, and hence have produced a different reaction to terror. British history is replete with instances of the defiance and eventual defeat of those who would destroy the country, and with examples of the famous stiff upper lip that makes American-style shouting extraordinarily difficult. But more recent history has tended to equate defiance with a shrug and an ability to show that "we can take it," rather than with an accompanying willingness to destroy the enemy on the beaches, on the landing grounds, in the fields—well, you know.

British culture now dictates a confused response to terrorists. Start with the unwillingness of the majority of the British people to recognize that they are indeed in a war. The flak-jacketed, heavily armed men and women lining my road to Heathrow last week were cops, not troops. America is at war, Britain is playing cops and criminals. These are very different things, with important implications for policy. Just as the Clinton administration decided to respond to terror attacks as if they were bank heists—he sent the FBI overseas—Britain has insisted on

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applying the law and procedures of the criminal justice system to terrorists. The entire panoply of legal procedures that prevent detention, deportation, and arrest of Muslim clerics calling for the blood of Britain's infidels is available to the as-many-as 3,000 terrorists whom the authorities estimate live in Britain, many trained in Afghanistan and Pakistan, or with actual battle experience in Iraq. Whatever rights U.K. law doesn't confer are available to the fledgling jihadists as a result of Blair's decision to sign on to Europe's Human Rights Act. Britain makes available to terrorists and preachers of mayhem, often at government expense, an entire industry of human rights lawyers and support groups. These resources will remain available to those who challenge the new powers the government will seek to curb the preaching of violence. The government also provides substantial housing and health care benefits to many men who reciprocate by trying to destroy it.

As if the decision to treat terror as a criminal matter did not place a large enough impediment in the path of the security forces, we have the infatuation of the British establishment with multiculturalism, and the pride with which its members and the left-wing press point out that 300 languages (soberer sources put the number at half that) are spoken in London.

The consequences of this equation of multiculturalism with the virtue of tolerance began with a refusal of the Blair government to get control of Britain's borders. As a result, there are hundreds of thousands—no one, including the government, knows for sure just how many—of illegal immigrants roaming around Britain. And many of these are not at all like the Mexicans who come to America to find work. They are attracted by the generous welfare payments to which they seem to have immediate and unrestricted access, and in many cases by the freedom to preach jihad. Britain, after all, is the country in which Abu Hamza al-Masri preached jihad to Zacarias Moussaoui. One of the attendees at a July 10 lunch the queen gave for some 2,000 World War II veterans in the garden of Buckingham Palace—84-year-old Colonel Peter Hodgson, who fought his way across Europe—probably violated the spirit of the celebration when he told reporters, "This hopeless government . . . let bad ones into the country and we have no idea who they are."

More important to radical Muslims is the unwillingness of the Blair government to extradite illegal immigrants and terrorists who are wanted by the authorities in their home countries. London is known in international security circles as Londonistan because of the haven it offers international terrorists—men who in some instances entered Britain illegally but cannot be deported because the Human Rights Act prohibits extraditing wanted criminals if they might be treated harshly in their home countries. That indeed is their likely fate in Morocco, Egypt, and other countries eager to apply homegrown justice—including what Pakistan's government calls "intensive interrogation"—of the sort that makes British elites squeamish.

But neither is the United States an acceptable deportation destination, since the Human Rights Act does not allow extradition to a nation that allows the death penalty. Deportation to France also seems to be off the table. The *Economist* reports that "Islamists" responsible for the 1995 bomb attacks on the Paris metro, "to French disgust, later found refuge in London." Whether last week's deal with Jordan—Britain is to extradite bad guys wanted in Jordan in return for a promise by the Jordanian government to treat returnees tenderly, and not execute them—will withstand judicial scrutiny and become a model for further such deals is difficult to determine.

So British policy remains: easy entry for potential terrorists; benefits for them while they are in the country; and relative safety from deportation and detention as enemy combatants. Little wonder that Britain's security services say another strike, more lethal than the one last Thursday, is a virtual certainty.

Providing haven for terrorists is apparently a small price for the London glitterati to pay for the advantage of feeling proud of their multiculturalism. Their children are sheltered from the massive influx of Muslims into some schools, and their own neighborhoods and social services are unaffected by the pressures created by an unassimilated immigrant population.

And continued belief in multiculturalism by the elites suits many Muslims just fine. Unlike immigrants who come to America in pursuit of the American dream, many Muslims come to Britain and other European countries determined not to assimilate into cultures they despise. They insist that neither British food is served, nor traditional British tolerance practiced, in the schools their children attend, demands the authorities find reasonable. Many of those children, unlike first-generation Americans, hold to their traditional ways with greater tenacity than their parents. This is especially true of young Muslim men eager to maintain their traditional dominance over women, a role threatened by the fact that Muslim girls are outperforming boys in school and in the workplace. Why Blair thinks that he can reach this group through the mostly moderate Muslims that constitute the outreach "network" or "task force" that he has established is unclear.

Indeed, Blair seems to share the view of all of the policymakers with whom I have spoken. They believe

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that the planners of the 7/7 attack had as their goal inducing a draconian reaction by the government so that Muslim youths will be further alienated from British society. As the ever-consistent *Guardian* put it two days after the attack, "Whitehall's national community tensions team . . . always recognized that a public backlash could be as damaging to civic life as the terrorists' bombs. Particular concern focused on any mischievous linking of the words Islam and terrorism." The alternative to this "softly, softly" approach would be the extensive use of wartime-like measures such as detention. This would fly in the face of the belief of British officials that a crackdown would "play into the hands of terrorists" by alienating young Muslims even more than they now are.

And many indeed are alienated, either because they have been unsuccessful in work or school, or because their version of Islam precludes adopting British mores. Take that alienation of young Muslim men from British society, add jihad-preaching clerics and the uninhibited right of British Muslims to return to Britain after attending radicalizing madrassas in Pakistan and Afghanistan, mix in the unwillingness of British leaders to seem hostile to Muslims, and you get some strange happenings—happenings that further distinguish British from American policy.

Britain, with the wreckage of 7/7 only recently cleared, even now is willing to allow Yusuf al-Qaradawi, a Muslim cleric who defends suicide bombings, to enter the country to attend an August 7 conference. This cleric has justified the killing of Israeli women because they are "militarized. . . . I consider this type of martyrdom operation as an indication of the justice of Allah Almighty." He has backed the execution of homosexuals "to maintain the purity of Islamic society," called for the killing of Jews when "the Hour of Judgment" arrives, and says that wife-beating is acceptable with "the hand, but not with the stick." He is barred from entering the United States because of terrorist connections. Absent a change of position by the Blair government, Sheikh al-Qaradawi will soon share a Manchester platform with speakers who claim that the Bush administration assisted the 9/11 terrorists, and that Israeli security had advance knowledge of the 7/7 attack but refused to tip off the British authorities.

Al-Qaradawi's reception on his last visit tells us a great deal about the differences between Britain and the United States. London mayor Ken Livingstone, a hard-left politician who blames the 7/7 bombings on U.S.-U.K. foreign policy, embraced al-Qaradawi, told him that he is "truly, truly welcome," hailed him as a "leading progressive Muslim," and denounced al-Qaradawi's critics for fanning the flames of "Islamophobia." Contrast that with New York mayor Rudy Giuliani's decision to have Yasser Arafat removed from a 1995 concert at the Lincoln Center when the Palestinian terrorist ignored a list, sent to the U.N. by the city's host committee, of countries not to be invited.

None of this is to argue that the policymaking elite is completely unrepresentative of the broader British electorate. Most Brits do understand that not all of their country's some two million Muslims (about 3 percent of the population) are terrorists, and very few have attempted to retaliate against mosques and Muslims since July 7. Like the elite, a majority now believes that Blair's decision to go to war in Iraq alongside America incited the terrorists to strike, no matter how many times Blair reminds them that several terror attacks, including the one on the World Trade Center, preceded the entry of coalition forces into Iraq.

So the prime minister is in a tough spot. Unlike Bush after 9/11, Blair after 7/7 could not count on broad support for a crackdown. He is meeting resistance to any plans to tighten the antiterrorist laws not only from the usual suspects on the left of his party, but from the Tories. He is inheriting the whirlwind of his refusal or inability to constrain illegal immigration, or close Britain's gates to newcomers from lands in which terror is preached. He has tied his hands by signing on to Europe's Human Rights Act, giving British judges a weapon with which to prevent detention and deportation. And he has contributed to the creation of a sense that multiculturalism is an unalloyed virtue.

No one surpasses my admiration for Tony Blair's principled stand on Iraq, a stand for which he has paid a high political price. Blair likes to say that his party is best when it is bold. So is he—and when he has an unconflicted view of the right and wrong of an issue. That was true when it came to Iraq: He saw what he thought was right, and he did it. But when it comes to issues such as immigration, extradition, and the application of the power of the state at home, he is torn between humanitarian and civil rights principles, and the need to wage war against Britain's domestic enemies. So although he was "totally opposed" to allowing al-Qaradawi to use Britain as a platform for his views, the prime minister felt bound by legal processes not to use the powers he has to exclude the cleric. That is just one example of the extent to which he is the prisoner of a dominant political class that is preventing Britain from responding to the threat the nation faces—and that threatens the durability of the Anglo-American alliance.

Blair is not at his best when his vision of what is right is blurred. Perhaps a summer's reflection will provide him with a clearer view of what he must do to win the battle on his home front. ◆

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Freelance Writers of the World, Unite!

You have nothing to lose but your copyright fees.

By Charlotte Allen

I opened my mail a couple of weeks ago and was surprised to discover that I'm a plaintiff in a lawsuit. The name of the case is *In re Literary Works in Electronic Databases Copyright Litigation*, and it's been pending since 2000 in the federal district court in Manhattan. According to the legal document I received, I'm a freelance writer (which I am), and I've got a beef against such outfits as Dow Jones (I've written for the *Wall Street Journal* and *Barron's*), the New York Times Co. (that's a newspaper I've never written for), and Lexis/Nexis, a major electronic database that collects and distributes articles from many newspapers and magazines. The legal document informed me that I am quite riled up because the newspapers and magazines I've written for have "violated the copyrights of freelance authors" by licensing our works, after publication, to electronic databases such as Lexis/Nexis "without the authors' permission" during the 1980s and early 1990s. The document further informed me that a vast array of media companies, including many not named as defendants in the lawsuit, had put together a settlement fund of up to $18 million from which we writers would be compensated for this appalling violation of our copyrights. Now that's real money.

Reading along further in the settlement document, I uncovered certain aspects of the lawsuit that made me uncomfortable. This class action, like all federal class actions, was filed by a number of individual writers who were deemed to be "representative plaintiffs" who could speak for the God knows how many tens of thousands of the rest of us freelance writers in America. Not many of the 23 names on the "representative plaintiffs" list were familiar to me, but some of the names I did know filled me with foreboding. One was that of the novelist E.L. Doctorow, best known for an anti-Bush graduation-speech rant at Hofstra University last year that nearly got him booed offstage, and also for his novel *The Book of Daniel* (later a movie), which argued that the convicted and executed atomic spies Julius and Ethel Rosenberg were actually innocent. Since, along with the noted historians Ronald Radosh and Joyce Milton, I believe the Rosenbergs were guilty as sin, I wondered how "representative" of me and my views Doctorow could be. Two other names I recognized belonged to the radical feminists Andrea "Sex Is Rape" Dworkin (recently deceased) and Letty Cottin Pogrebin, a onetime big cheese and pal of Gloria Steinem at *Ms.* magazine. Unfortunately, anti-patriarchy isn't my thing.

Then came what might be called the "money paragraph" of the document, the section that explained how the $18 million pot would be divvied up. The settlement sets up three classes of articles written by freelancers for newspapers or magazines. The first consists of works registered with the U.S. Copyright Office within three months of publication. The authors of those works win fairly big: from $875 to $1,500, depending on how frequently they wrote for any one publication. Next come those who waited, presumably until after the suit was filed, to rush to the Copyright Office, as long as they got there before December 31, 2002. Those folks collect the greater of $150 or 12.5 percent of the original sales price of their articles. Then come the plebes: those who didn't bother to register their works at all. They collect anywhere from $60 per article all the way down to $5 (or possibly less, as the settlement calls for steep discounting with respect to articles published before 1995). Before they can receive their money, writers in all three categories must file a "proof of claim" for each article by September 30 of this year stating its title and publication date and the amount for which it was sold. In return, they sign away their right to any future compensation for electronic rights.

Now here comes a hitch that you non-writers should know about: About 99.9 percent of freelancers never bestir

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themselves to register their works with the Copyright Office. Books, yes (the publisher takes care of that); articles, hardly ever. Indeed, I'm told by someone close to the class action that the lawyers who filed it wanted to have all "representative" plaintiffs be registered—and accordingly had a tough time digging up name-plaintiffs besides Doctorow and the others. Registering a copyright isn't difficult, but it's a hassle—you have to fill out a form and send a copy of the work to Washington—and it also costs $30. For a long magazine article sold, say, to the reasonably generous *Atlantic*, that's not too bad, but it's a big chunk, when added to taxes, out of a $350 book review sold to the *Washington Post*. Failure to register doesn't mean that writers forfeit their copyrights under federal law, but it does mean that if they sue for infringement, they have to prove that they were monetarily harmed. By contrast, those who register and then sue for infringement receive automatic damages plus attorney's fees under the 1976 Copyright Act.

The upshot is that the vast majority of writers who go to the trouble of sorting through decades-old boxes of clippings and filling out the claim forms stand to collect $60 per article tops for all that paperwork (the average payout per article will probably be more like $25). The converse is that nearly every one of these people, if they had to go to court and prove actual damages, would probably collect zilch. For who is harmed—and how—when a newspaper sells its content to a database? Electronic databases such as Lexis/Nexis and University Microfilms are research tools typically used by libraries, schools, and other writers, and the articles appear in plain-vanilla text-only format. As far as I'm concerned, I'm perfectly happy to have my work distributed via Nexis; it gets my name around.

If 99.9 percent of the class members in *In re Literary Works in Electronic Databases* will likely walk away with peanuts, the lawyers who brought the suit—two law firms in San Francisco and one in Philadelphia—stand to collect big time. The settlement document hands the three firms $3.825 million in attorneys' fees plus more than $500,000 in costs. That's something to think about: $400 for me, $4 million for my lawyers.

The class action suit filed by my new friends Doctorow, Dworkin, Pogrebin, *et al.*, is actually an offshoot of another electronic-database lawsuit filed in 1993, *Tasini* v. *New York Times Co.*, that went all the way to the Supreme Court in 2001. *Tasini* was not a class action, but as with "my" lawsuit, the 13 writer-plaintiffs in *Tasini* seemed as well known, if not better known, for their far-left political views as for their literary output. They included such figures as: H. Bruce Franklin, a Maoist literature professor at Rutgers who had been turfed from Stanford in 1972 for helping students occupy the campus computer center to protest the Vietnam war; Barbara Garson, another Vietnam-era antiwar-horse who had written a 1967 play, *MacBird*, analogizing President Lyndon Johnson to Shakespeare's murderous thane; New York University law professor Derrick Bell, a cofounder of the "Critical Legal Studies" movement that views the edifice of the law as a smokescreen for capitalist power grabs; and Jonathan Tasini himself, a labor-movement polemicist whose writings have targeted every corporate evil from Wal-Mart to globalization and then some.

Tasini was then president of the National Writers Union, one of three professional organizations for writers involved in both lawsuits. The other two, the Authors Guild and the American Society of Journalists and Authors, concern themselves mainly with writers' issues—finding work, fighting perceived censorship, and the like. But the National Writers Union, an affiliate of the United Auto Workers (only a writer could see the metaphorical connection), has branched out into an all-purpose advocacy group at the left end of the ideological spectrum. The union backs gay marriage, condemns the war in Iraq, and has announced its opposition to discrimination against its "transsexual, transgender [there's a difference?], and cross-dresser members." When the University of Minnesota expressed second thoughts about its press's planned publication of Judith Levine's book *Harmful to Minors* (2002), which claimed there was nothing wrong with children having sex, the union fired off a letter of protest, charging the university with helping to "perpetuate a taboo on the subject of minors and sexuality." The National Writers Union was the driving force behind the *Tasini* lawsuit, with part of the litigation funds coming out of the dues of the folks who build the SUVs that left-wing writers denounce out of the other sides of their mouths.

There is something ironic about avowed leftists' claiming capitalist-style property rights in their writings, but perhaps it has something to do with the Marxist "labor" theory of value. At any rate, the case went to the Supreme Court after a federal appeals court ruling in the writers' favor. The issue was whether putting an article into an electronic database amounted to a second publication of the work, analogous to republishing the article in an anthology. The Supreme Court ruled 7-2 that it was—and the court was right. Up until then, the standard writer's contract granted only the "first North American serial rights" to the newspaper or magazine, leaving the writer free to sell the piece a second time elsewhere later. No one, either writers or publications, had even thought about databases—because they didn't exist until the 1980s. *Tasini* was one of those rare decisions in which the Supreme Court's conservative bloc—Antonin Scalia, William Rehnquist, and the like—signed on to a majority

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opinion written by the ultra-liberal justice Ruth Bader Ginsburg.

Of course, long before the *Tasini* decision came down in June 2001, just about every newspaper and magazine in America hired copyright lawyers to rewrite their standard-form contracts so as to make it airtight-clear that the writers were giving up their rights to control electronic distribution, in return, perhaps, for a slightly higher fee for the article itself. That was as it should be, because those rights are worthless to individual freelancers, practically speaking, unless the writer happens to have a well-known name or a technical specialty, such as science or exotic travel, that would create a noticeable hole in the database should the writer choose to play hardball and refuse to sign.

"The value in those rights is the holdout value, because newspapers want to be able to sell complete databases," Douglas Lichtman, a professor of copyright law at the University of Chicago, explained to me. "If you can say, 'I am the theater critic for the *New York Times*, and you can't place my stuff in your database,' you might have some clout. But if you're unsuccessful, you lose completely. You won't be able to sell your writing" to the databases. Lichtman calls the *Tasini* suit "a historical accident." In retrospect, everyone knew what the contracts should have said, "which is why they were changed. The *Tasini* decision was good law but bad policy."

After the ruling came down from the Supreme Court, the *New York Times* issued an internal memo, later leaked to the press, that warned its editors not to run articles by any of the name-plaintiffs in that case. This might have seemed a reasonable precaution, for few people care to do business with someone who has sued them, but the plaintiffs seized the opportunity to declare that they had been "blacklisted" by the *Times*. The martyrs styled themselves the "*Tasini* Thirteen" in the manner of the Hollywood Ten. Behind the scenes, however, most of them, including H. Bruce Franklin, who had a dispute with the *Atlantic*, quietly settled their electronic claims for undisclosed amounts.

Meanwhile, the class-action suit on behalf of the rest of us went on file. As far as the legal issues were concerned, the class-action was shooting fish in a barrel, since the federal appeals court had already ruled in our favor in *Tasini* and the Supreme Court was about to affirm. The trick to our case—and maybe that's what makes it worth $4 million in legal fees—was to pry a substantial settlement out of an array of major print-media publishers without quite letting on that nearly 100 percent of us would likely never have been able to prove that we were owed a nickel in damages from any of them because we'd never registered our copyrights.

Indeed, when I asked Kay Murray, general counsel for the Authors Guild, how many members of the plaintiff-class were actually holders of registered copyrights in her estimate, she replied, "I can't discuss that." Her response helps explain our lawyers' eagerness to ensure that all the name-plaintiffs in our case, the ones who were supposed to be "representative" of the rest of us, were duly registered and thus were entitled to receive at least some statutory damages in court had they sued individually. My source informs me that the writers' organizations first tried to persuade the publishers to set up an automatic licensing and royalty-check system for writers in databases along the lines of the ASCAP system in the music industry. The publishers refused to do that—so organizations went for the next-best arrangement that would make them look as though they were doing something for their members: a multi-tiered, jerry-built settlement that hands out piddling sums to vast numbers of people who actually deserve nothing at all.

The biggest problem "our" lawyers now face is finding enough freelance writers who feel sufficiently enraged about the infringement of their copyrights by Big Capitalist Media that they'll be willing to take time away from their writing in order to search through their files of yellowing clips and enter the necessary data on their proof-of-claim worksheets so they can collect their few hundred bucks. I've asked around among some fellow writers who received the notice of settlement, and their responses have ranged from "What?" to "I'm not gonna bother," to "Oh, I just threw that stuff out." My own position is that I could make more money using the time to write another article. I may change my mind, however, for the settlement document contains a kind of prisoner's dilemma: If the total amount claimed by those who do file forms doesn't exceed $10 million, the overage (up to the $10 million) will go on a pro rata basis to those who file. Now there's an incentive!

Alternatively, I could file a protest of the entire settlement, but then I'd have to show up in person (or send a lawyer to show up) in federal court in Manhattan on July 28, the date of a scheduled hearing on whether to approve the terms. In any event, my protests are more general. They concern a class-action system that rewards lawyers to the tune of millions of dollars for cherry-picking easy legal battles, and a court system that is willing to dissipate even more millions of dollars on people like me who cannot prove that they were injured in the smallest way. If the National Writers Union wants to do something for writers, instead of fooling around with Lexis/Nexis, why doesn't it try to get us bigger fees for our articles in the first place? Hell, I might even decide to become a Marxist and join up. ♦

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James Brown at Live8 in Edinburgh

Troubled Soul

The man who started it all heads for the finish line. By Martha Bayles

"I took a trip to Rome during one of my down periods a few years ago, and had the good fortune to be greeted by the pope." Reading about this encounter, one naturally wonders what the Hardest Working Man in Show Business and the Hardest Working Man in Religion had to say to each other. "The pontiff shook my hand three times," Brown continues, "and I told him I had been thinking about leaving the music business, and to my surprise, he advised against it. I asked him why. He said, 'Because, sir, you can get things done.'"

Was the Holy Father a soul man in the James Brown sense? Or was this standard papal advice to visitors long in the tooth? You won't find out the answer from *I Feel Good*, a carelessly written celebrity biography that barely skims the surface of Brown's fascinating life. For an in-depth look, read Brown's first autobiography, *James Brown: The Godfather of Soul* (first published in 1986, reprinted in 2003), coauthored with Bruce Tucker. In Tucker, Brown had a real writer to work with. In Eliot, he has someone best described as no Plutarch. Eliot has written bios of Cary Grant, the Eagles, Erin Brockovich, Walt Disney, Donna Summer, Roy Clark, Vicki Lawrence, Bruce Springsteen, Phil Ochs, Burt Reynolds, Barry White, and Kato Kaelin—more than is good for him, probably, and certainly more than is good for Brown.

I Feel Good
A Memoir of a Life of Soul
by James Brown and Marc Eliot
New American Library, 266 pp., $24.95

James Brown
The Godfather of Soul
by James Brown and Bruce Tucker
Thunder's Mouth Press, 384 pp., $14.95

The clear purpose of *I Feel Good* is to repair a very tarnished image. Brown has had a bad 20 years. Between 1988 and 1991, he served part of a six-year prison term for assault, failure to stop for an officer, resisting arrest, and illegal possession of a pistol and drugs. In 1998 he was arrested after a car chase and sentenced to a 90-day drug rehab. In 2003 he was pardoned by the state of South Carolina, but that didn't stop him from getting in trouble again. In January 2004, he was arrested for allegedly shoving his wife, Tomi Rae, to the floor of their bedroom.

But *I Feel Good* gives only a garbled account of these misadventures, laced with braggadocio and racial paranoia. Again, readers who would rather focus on Brown's accomplishments are advised to read Tucker. Not only does Tucker's book include old-fashioned aids like an index and discography (both maddeningly absent from Eliot), it also brings out the complexity of a man who, despite his recent decline, is an American icon. Rough yet refined, boastful yet humble, Brown is an extraordinary talent who also happens to be blessed (cursed?) with a sharp intelligence that cuts through the B.S. as cleanly as his incredible voice cuts through the air.

The true fan will say, "Skip the books and listen to the music." Good advice, since no amount of description

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can capture the essence of James Brown. But given the state of popular music these days, listening is not a simple proposition. To a large degree, what one hears will depend on one's background, age, and cultural outlook.

For white middle-class fans who grew up in the 1960s, Brown is the one who added funk to soul. That is, he took the style of black music then popular among whites and injected it with rhythmic steroids. For African Americans of the same vintage, Brown is one of several artists who secularized church music. That is, he took the burning heart of gospel, the "hard" style of the solo evangelist, and injected it with hedonism. To most whites, funk was all about sex—an appeal Brown exploited with titles like "Sex Machine" (even though the lyrics had nothing to do with sex and everything to do with dancing). To most blacks, funk, like soul, was full of echoes: Behind every "baby" they heard "Jesus."

In music, the line between sacred and secular is tricky. A century ago, African Americans drew it between instruments (tambourines okay, drums not) and practices (dancing with the feet apart okay, with them crossed not). In the 1920s a vaudevillian named Thomas A. Dorsey got saved at a Baptist convention and decided to incorporate the music he knew best—the blues—into a new genre called "the gospel song." People are still surprised to learn that the salty blues "It's Tight Like That" was written by the same man who wrote Martin Luther King's favorite hymn, "Take My Hand Precious Lord."

Though blurry, the line persisted through the 1950s. The recent movie *Ray* contains a scene in which angry Christians protest the use of gospel sounds by a young nightclub singer named Ray Charles. Righteous anger was also directed against the rock 'n' roller Little Richard, who took his "devil-destroying" style from the Holiness Church in Macon, Georgia. The leading white rock 'n' rollers also came out of Pentecostalism: Jerry Lee Lewis learned piano in the Assembly of God in Ferriday, Louisiana (also attended by his cousin, Jimmy Swaggart); and Elvis's legendary hip shake was standard practice in the Pentecostal First Assembly of God in Tupelo, Mississippi.

Brown belongs to this generation, but strictly speaking, his career did not start in church. As every fan knows, Brown made his performance debut on the Third Level Canal Bridge in Augusta, Georgia, where in 1940 at the age of seven he "buck-danced" for soldiers on their way to Daniel Field. The dimes and nickels he earned were given to his Aunt Honey, who ran a house of "gambling, moonshine liquor, and prostitution" and had taken the boy in after his mother deserted him and his father, an itinerant laborer, could not keep him.

Yet church played a formative role. Ashamed of his patched garments, Brown was caught stealing clothes and sent to the Georgia Juvenile Training Institute in Rome, where he formed a gospel group. Upon his release he went to live with a foster family in Toccoa, where he sang with the Trinity CME Church choir and the short-lived Ever Ready Gospel Singers. Unable to break into radio with gospel, he formed an R&B band with his friend Bobby Byrd. Eventually known as the Flames, this little band worked their way through countless tiny gigs, including one at the white high school, where they played halftime during afternoon basketball games.

"Once," recalls Brown, "I came sliding across the basketball floor with a big dust mop and danced with it. The kids went wild."

That dust mop served Brown well. Ever the consummate showman, he was soon the star of the Flames, optimistically renamed the Famous Flames. In 1956 they had their first hit, "Please, Please, Please" (#6 on the R&B chart). When their record label suggested calling them James Brown and the Famous Flames, the others resentfully quit. But Brown kept going, forming a new band, working tirelessly at his sound and stagecraft, and not only climbing the R&B chart but also "crossing over" to the larger, more lucrative pop chart.

Many of Brown's crossover hits between 1959 and 1962 ("Try Me," "Bewildered," "Prisoner of Love") were ballads in the soaring, aching style of soul. His vocalism here is so powerful, the listener is struck by how easily he could have edged Otis Redding off the stage at the 1967 Monterey Pop Festival. But that didn't happen, because by the time millions of white kids discovered they had soul, Brown had moved on to funk.

The breakthrough came in 1965: "Papa's Got a Brand-New Bag, Part I" (#1 R&B, #8 pop). Few moments in popular music are as legendary as the recording session at which Brown's band changed the basic beat from one-TWO, three-FOUR to ONE-two, THREE-four. But instead of penetrating the legend, Eliot adds another goofy layer to it:

> With the "One," James Brown had thrown out all the traditional chord progressions along with his sweet melodies, the salad *and* the dressing of R&B and soul—and retained only the thick juicy cut of the rhythm. Gone along with the excess was the timidity, the apologetic head-down shuffle of Black musical passivity. James Brown's "One" represented pride and authority, a sound that stepped up to the mike with strength and conviction, and a generation of Black and White boomers instantly embraced it *on the good foot*.

Now let me get this straight. By encouraging guitarist Jimmy Nolen and saxophonist Maceo Parker to punch out an especially tight, snappy rhythm, Brown was liberating his fellow blacks from harmony and melody, those twin oppressions that had destroyed the pride of such timid, apologetic, head-down, shuffling darkies as Louis Armstrong, Count Basie, Sidney Bechet, Big Bill Broonzy, Nat "King" Cole, John Coltrane, Sam Cooke, Miles Davis, Duke Ellington, Ella Fitzgerald, Marvin Gaye, Billie Holiday, Dizzy Gillespie, Al Green, Earl Hines, Mahalia Jackson . . . ? (You get my drift, so I'll stop at J.)

"Funk" is an old word. In England, it means a bad mood. In America, it means a strong odor, especially a bodily one. Among African Americans, "funk" also refers to the rough, bluesy, polyrhythmic end of the musical spectrum (along with "dirty," "nasty," "low-down," and "gut-bucket"). In the early

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1950s, when post-bebop jazz musicians were returning to their musical roots, "funk" was adopted as a badge of authenticity. For example, Milt Jackson of the Modern Jazz Quartet called his 1954 album "Opus de Funk."

By the early 1960s, funk was well established in jazz. But not until played by Brown's perfectionist band did funk become mainstream—to the extent that such gnarly, muscular, whiplash rhythms can ever become mainstream. Brown recalls: "I was still called a soul singer . . . but musically I had already gone off in a different direction. . . . When I saw the speakers jumping, vibrating in a certain way, I knew that was it: deliverance."

As his wording implies, Brown never lost the gospel spark. The high point of his concerts was always the moment when, after a 30- or 40-minute version of a song, he would sink to the floor of the stage and allow his "cape man," Danny Ray, to enfold him in a satin cloak like that of the wrestler Gorgeous George. Then, as Brown limped off-stage supported by Ray, the band would teasingly revive the rhythm. Brown would stop, swaying like a man drunk with exhaustion, and amid the fulminations of the rhythm and the screams of the fans, wait for the spirit to seize him. When it did, he would throw off the cape and deliver a ferocious encore.

Brown, in his prime, blazed with energy both spiritual and erotic. Yet as soul gave way to disco in the "liberated" 1970s, the spiritual was forgotten and the erotic reduced to raw sex. Some performers, like Barry White, embraced this change and became caricatured "love men." Others, like Al Green, rejected it and returned to gospel. Brown tended the flame without going to either extreme, as suggested by his comment to Tucker: "Really, a lot of the ways I communicate with people and *what* I communicate I owe to the church. When I'm on a stage, I'm trying to do one thing: bring people joy. Just like church does."

Yet disco hurt Brown. Listeners who came of age in the 1970s will hear his rhythms as part of a generalized soundtrack that, as the decade wore on, became ever more mechanical.

Reuters / Win McNamee

Brown's account of this transformation is priceless:

> Disco is a simplification of a lot of what I was doing, of what they *thought* I was doing. Disco is a very small part of funk. It's the end of the song, the repetitious part, like a vamp. The difference is that in funk you dig into a groove, you don't stay on the surface. Disco stayed on the surface. See, I taught 'em everything *they* know but not everything *I* know.

After the disco craze imploded in 1979, the name was dropped but the method remained. Brown adds: "It was all done with machines. [The artists] thought they could dress up in a Superfly outfit, play one note, and that would make them a star. . . . The record companies loved disco because . . . machines can't talk back and, unlike artists, they don't have to be paid." Computerized rhythms still dominate popular music. Why struggle to record live drummers, bassists, and other percussionists, when the majority of listeners don't notice the difference? To grasp the current relevance of Brown's comment, just substitute "pop" for "disco" and "Britney Spears" for "Superfly."

Finally, people who grew up in the 1980s will associate Brown not with soul or disco but with rap—because when rap first emerged from uptown New York dance clubs, its foundation was funk, especially James Brown funk. But rap did not grow directly out of the musical tradition that produced James Brown. Instead, it grew out of a *spoken* tradition with roots in both North America and the Caribbean. In the West Indies historically, the popular music of blacks was not played on the government-controlled radio. Nor was it played in people's homes, because most blacks were too poor to own record players. Instead, it was provided by mobile DJs with large record collections and powerful "sound systems," who specialized in "toasting," or delivering a steady patter over instrumental remixes of popular records.

The creator of rap is said to be Kool DJ Herc (Clive Campbell), a Jamaican immigrant who introduced toasting to the Bronx. He was quickly followed by Grandmaster Flash (Joseph Saddler), the son of Barbadian immigrants who devised a way to switch back and forth between two turntables. Atop his "wheels of steel," Grandmaster Flash was a true percussionist, weaving together the "breaks," or most heavily rhythmic sections, of two different funk records.

Early rap was thus an improvised art requiring a ready wit, a sharp ear, and quick hands. But the 1970s were a time of swift technological change, so it was not long before rap went high

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Jerry Lee Lewis, Fats Domino, James Brown

Bettmann / CORBIS / Star Black

tech. All it took were a few chart hits. Once rap entered the studio, it no longer depended on the skills of live performers, either record spinners (DJs) or rappers (MCs). Instead, it became a sound collage, assembled on tape by a producer adept at "sampling" all sorts of recorded sounds—not just voices and rhythms but everything from sirens and gunshots to political speeches and jazz solos. (Today, of course, sampling is even easier, because it is done digitally.) Because the funky rhythm remained essential, the single most sampled source in rap is James Brown. That's why he commented to *Spin* magazine in 1991 that rap "is the next thing, but it's all from me." And that's why he sued record labels who were sampling without paying for the rights.

Apart from self-interest, Brown's opinion of rap seems mixed. Back in the 1980s, he shared the general view of it as more bound up with politics than most forms of black music. That suited him, because that was how he saw his own music. It has never been easy to classify Brown politically. Today's "liberal" and "conservative" labels don't fit. Mostly Brown belongs to the generation of African Americans described by Martin Luther King as "materialistic, patriotic, and religious." During the 1960s, when his fame was at its zenith, Brown was attacked by both left and right. The left criticized him for writing a song called "America Is My Home," for entertaining the troops in Vietnam (even though he had to battle the State Department for permission), and, above all, for endorsing Richard Nixon in 1972. The right criticized him for writing a song called "Say It Loud / I'm Black and I'm Proud," which many misinterpreted as anti-white.

Brown came close to being a political leader in April 1968, when rioting broke out in several cities after the assassination of King. Brown was scheduled to give a concert at the Boston Garden, but Mayor Kevin White tried to cancel it, for fear that it would provoke rioting. Brown argued that it would be more prudent not only to hold the concert but also to televise it. He was right. Thousands of young Bostonians stayed home to watch Brown perform—and to hear him say, "Let's not do anything to dishonor Dr. King. . . . You kids, especially, I want you to think about what you're doing. Think about what Dr. King stood for. Don't just react in a way that's going to destroy your community."

It was in this same upbeat spirit that, in the mid-1980s, Brown told Tucker that he saw rap as "an extension of things I was doing for a long time: rapping over a funky beat about pride and respect and education and drugs and all kinds of issues." Yet Brown also saw where rap might be headed: "I feel solidarity with the breakers and the rappers and the whole hip hop thing—as long as it's clean."

Rap took a turn for the worse in the late 1980s, when the so-called gangsta style came out of Los Angeles. And in 1990, the pornographic sensibility entered in the form of a Florida group called 2 Live Crew. At first, gangsta rap seemed a kind of naturalism: an honest account of the ravages of crack, family breakdown, and gang violence in blighted neighborhoods. But naturalism became exploitation when gangsta rap caught on in the suburbs, and the pathology of the poor became *the minstrelsy of the rich.* As for 2 Live Crew, their legacy thrives in the "crunk" style, which depicts the sexuality of young black men and women in ways that, to put it mildly, conform to the fevered imaginings of the worst white racists. The standard defense is to say that this stuff is a parody. But of what? For millions of young people around the world, including many African Americans, these words (and video images) define blackness.

How did this happen? Brown's explanation in Eliot is worth quoting at length, because it echoes the view of a whole generation (not his) who grew up thinking of rap as something positive and now reel at the lessons it is teaching their kids:

> The FCC controls the licensing of everything connected to broadcasting. If they don't want something on the air, it doesn't get on. . . . I believe a lot of the most anarchic, "dirty" songs . . . were either something [the artists] were pressured by labels into recording, or actually products originated by some faction of the FCC. . . .Who else do you think has sanctioned all the playing of the worst of it on the air constantly, so that White people could shake their heads and say, "See? *That's* what Black people are really all about. That's how they talk about their girlfriends and worse, their mamas. . . . Rappers out there . . . *Listen to your Godfather!* . . . Somebody's lying to you somewhere. . . . We need to get back to the roots of our music.

This may sound paranoid, but as the saying goes, even paranoids have enemies. Brown has always understood that when the middle class dabbles in the sewer, the lower class drowns. Last year, when a mug shot of him with creased face, disheveled hair, and open dressing gown circulated on the Internet, he was mortified. Like all old-fashioned show business people, especially those who grew up without good clothes, Brown hates to appear ill-groomed. Compare this fastidiousness with the sartorial grossness perpetrated by rappers today, and you will see how high the B.S. is piled.

Godfather of Soul, get your act together. We need your help to cut through it. ♦

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Lost Victory

Creighton Abrams might have won the Vietnam war.

BY MACKUBIN THOMAS OWENS

It is surely the conventional wisdom that the United States was predestined to lose the Vietnam war. According to the orthodox view, the Vietnamese Communists were too determined, the South Vietnamese too corrupt, and the Americans incapable of fighting the kind of war that would have been necessary to prevail.

Despite its origins as a staple of left-wing political opinion, the claim that the U.S. defeat in Vietnam was inevitable now transcends ideology. Today, when conservatives deny the claim that Iraq is like Vietnam, many do so because they, too, believe the conventional wisdom about Vietnam.

Vietnam Chronicles
The Abrams Tapes, 1968-1972
edited by Lewis Sorley
Texas Tech University Press,
917 pp., $50

Several years ago, Lewis Sorley provided an antidote to the conventional wisdom, a remarkable book entitled *A Better War.* Building on his excellent biographies of Army generals Creighton Abrams and Harold Johnson, Sorley examined the largely neglected later years of the conflict and concluded that the war in Vietnam "was being won on the ground even as it was being lost at the peace table and in the U.S. Congress."

Sorley's argument is controversial, but I find it persuasive. The fact is that most studies of the Vietnam war focus on the years up until 1968. Those studies that examine the period after the Tet offensive emphasize the diplomatic attempts to extricate the United States from the conflict, treating the military effort as nothing more than a holding action. But as William Colby observed in a review of Robert McNamara's memoir, *In Retrospect*, by limiting serious consideration of the military situation in Vietnam to the period before mid-1968, historians leave Americans with a record "similar to what we would know if histories of World War II stopped before Stalingrad, Operation Torch in North Africa and Guadalcanal in the Pacific."

Colby was right. To truly understand the Vietnam war, it is absolutely imperative to come to grips with the years after 1968. A new team was in place. General Abrams had succeeded General William Westmoreland as commander of the U.S. Military Assistance Command-Vietnam in June 1968, only months after the Tet offensive. He joined Ellsworth Bunker, who had assumed the post of ambassador to the Saigon government the previous spring. Colby, a career CIA officer, soon arrived to coordinate the pacification efforts.

Far from constituting a mere holding action, the approach the new American team followed constituted a positive strategy for ensuring the survival of South Vietnam. As Sorley wrote in *A Better War*, Bunker, Abrams, and Colby

> brought different values to their tasks, operated from a different understanding of the nature of the war, and applied different measures of merit and different tactics. They employed diminishing resources in manpower, materiel, money, and time as they raced to render the South Vietnamese capable of defending themselves before the last American forces were withdrawn. They went about that task with sincerity, intelligence, decency, and absolute professionalism, and in the process they came very close to achieving the goal of a viable nation and a lasting peace.

Sorley has now provided us with a glimpse of the record upon which he based his assessment of Abrams and the conduct of the war after 1968. During the four years General Abrams was commander in Vietnam, he and his staff made more than 455 tape recordings—2,000 hours of briefings and meetings. In 1994, with government approval, Sorley began transcribing and analyzing the tapes. In a year of very long workdays, Sorley laboriously produced 3,200 single-spaced pages of handwritten notes and extracts, which he used to write *A Better War*.

But Sorley believed that the tapes contained much more of interest to scholars and historians of the war than he could include in the book, so he decided to publish an annotated collection of extensive excerpts from the tapes. The bulk of the excerpts are from the Weekly Intelligence Estimate Updates—briefings that Abrams received from June 1968 to June 1972—but they also include recordings of meetings with such visitors as the secretary of defense, the chairman of the Joint Chiefs of Staff, and other high-ranking officials.

Sorley observes that many commentators on the war, including some authors of official Army histories, argue that the changes from Westmoreland to Abrams were evolutionary, primarily stemming from the failure of the Tet offensive, which cost the North Vietnamese army and Viet Cong so many casualties that they had to change their strategy and tactics. But according to Sorley, the tapes illustrate conclusively that such an interpretation is not supported by the battlefield realities. For after Tet the enemy tried repeatedly—in May 1968, in August-September 1968, and at Tet 1969—to achieve major military victories through general offensives, even though he continued to suffer very heavy casualties with nothing to show

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in return. It was not until after Tet 1969 that the enemy gave up on this approach.

The contrast between Westmoreland and Abrams could not have been starker. Westmoreland's operational concept emphasized the attrition of North Vietnamese forces in a "war of the big battalions": multi-battalion, and sometimes even multi-division, sweeps through remote jungle areas in an effort to fix and destroy the enemy. Such "search and destroy" operations were usually unsuccessful, since the enemy could usually avoid battle unless it was advantageous for him to accept it. But they were also costly to the American soldiers who conducted them, and to the Vietnamese civilians who were in the area.

Abrams's approach focused not on the destruction of enemy forces per se but on protection of the South Vietnamese population by controlling key areas. He then concentrated on attacking the enemy's "logistics nose" (as opposed to a "logistics tail"). Since the North Vietnamese lacked heavy transport within South Vietnam, they had to pre-position supplies forward of their sanctuaries before launching an offensive. Americans were still involved in heavy fighting, as illustrated by two major actions in the A Shau Valley during the first half of 1969: the 9th Marine Regiment's Operation Dewey Canyon, and the 101st Airborne Division's epic battle for "Hamburger Hill." Most people don't realize that, in terms of U.S. casualties, 1969 was second only to 1968 as the most costly year. But now North Vietnamese offensive timetables were being disrupted by preemptive allied attacks, buying more time for Vietnamization.

Commentators also claim that Vietnamization came about in response to pressure from Washington. But improving the South Vietnamese army had been one of Abrams's top priorities since his appointment as Westmoreland's deputy in 1967. Abrams, not anyone from Washington, was primarily responsible for the emphasis on improving the South Vietnamese army, beginning the process of its recovery from the effects of long-term neglect that had prevailed under Westmoreland, who had pushed it aside so he could pursue an American war.

The 1972 Easter offensive revealed the fruits of Abrams's efforts. This was the biggest offensive push of the war, greater in magnitude than either the Tet offensive or the final assault of 1975. While the United States provided massive air and naval support, and there were inevitable failures on the part of some South Vietnamese units, all in all, the South Vietnamese fought well. Then, having blunted the Communist thrust, they recaptured territory that had been lost to Hanoi.

Together, *A Better War* and *Vietnam Chronicles* reinforce my belief that the "unwinnable" Vietnam war might have ended differently. In any event, the edited transcriptions in *Vietnam Chronicles* clearly demonstrate that Creighton Abrams and his team possessed a policy and strategy that, but for domestic politics, might have led to an American success in Vietnam. ♦

Canon Fodder

When politics and literature meet, literature loses.

BY WILFRED M. MCCLAY

It is the first task of a reviewer to tell us whether a book is worth buying and reading. In the case of Denis Donoghue's new book on the American classics, the job is, alas, very easy. For readers in a hurry, here's the capsule judgment: Save your money and your time. A reading of this meandering, self-indulgent, intermittently strident, and consistently half-baked "personal essay" will do nothing to advance your knowledge of, appreciation of, or critical insight into the classic works of 19th-century American literature. It is not sufficiently provocative or stimulating to rise to the level of being annoying. It is of interest only as an example, and a very saddening one, of just how low the state of literary studies has sunk in our time, when one of our best literary scholars could be induced to publish such a strangely intemperate and rudderless book.

The American Classics
A Personal Essay
by Denis Donoghue
Yale, 304 pp., $27

Indeed, Donoghue has long been one of the best we have, a prominent member of that tiny remnant in literary studies that still approaches texts with thoughtful and inquisitive respect, and still treats the act of close reading as an avenue to truth and beauty. The author of such wonderfully unfashionable works as *Speaking of Beauty* and *The Practice of Reading*, Donoghue has been a spokesman for the dignity and legitimacy of aesthetic experience. He has steered clear of the near-universal tendency to allow political or social considerations to crowd out the imperatives of the literary imagination, and has refused the tendency to treat the Western religious heritage as nothing more than crippling baggage.

Although it would be fair to associate his kind of formalism with the general approach advocated by T.S. Eliot and the so-called New Criticism of a half-century ago, it would also be fair to say that he proceeds in an idiosyncratic and unsystematic way, without visible school ties, and his work generally will reward the attention of anyone who genuinely loves literature. Although he has written earlier in his

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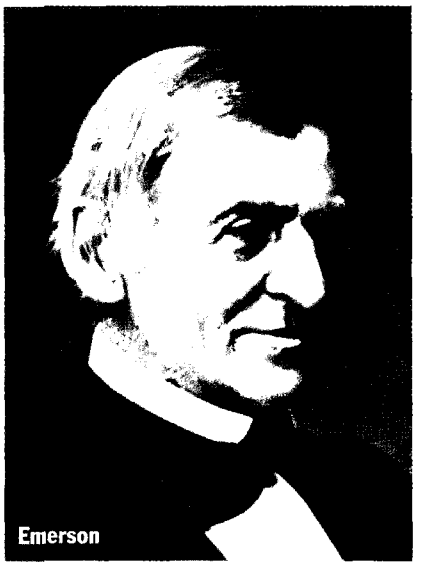
Melville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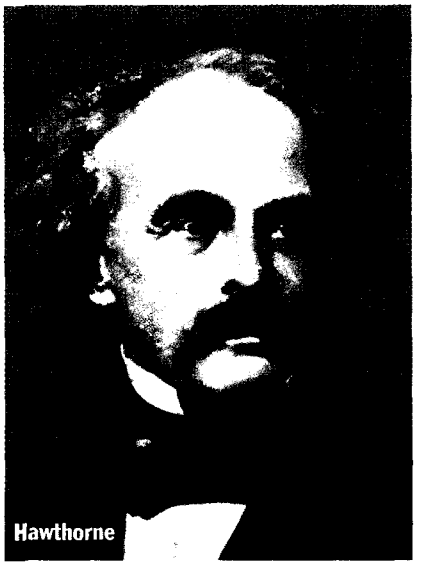
Hawthorne

All images: CORBIS

career on American literary topics, his reputation was made elsewhere, and so the interest in this book was great, at least for those of us who have admired his work in the past. I'm sure that I am not the only reader to come to this book with a real sense of anticipation—and come away from it both surprised and appalled.

What went wrong? In a word, politics, which bespatters this book like a deluge of bird droppings unloaded on an unwashed car. Donoghue has taken up the cause of post-9/11 anti-Americanism with a vengeance, and his ever-so-fashionable political desiderata, which he offers *en passant* as if they were self-evident truths with which all intelligent readers will of course agree, prove to be the undergirding structure in an otherwise disorganized jumble. He clues us in to what is coming in the book's opening pages, where, after making a stock observation about the ignorance of his American students, he laments that it is almost too much of a burden to *himself* to have to read these books, at a time when "the violence without" makes it so hard to concentrate. "Afghanistan, Iraq—and what next?—Israel's Sharon triumphant in Bush's Washington, the Palestinians brushed aside, the American empire enforcing itself commercially and militarily. . . . What is the point of reading books at such a time, when reality is defined as military power, vengeance, 'the war on terror,' and oil? But what else can one do but read books?"

Oh, but that's easy. One can read and interpret, and reinterpret, a body of literature in a way that is designed to further one's political passions and agenda. This is, after all, what the profession of literary studies has been increasingly preoccupied in doing these past 30 years or so, and this is the very tendency that Donoghue has stood so valiantly against. Until now, that is. With *The American Classics*, Donoghue appears to have put aside his principles and gone over to the other side.

Just as a determinedly chaste woman may, after years of self-discipline and self-denial, throw it all away on some incomprehensibly tawdry affair with a transparent lout, perhaps out of a compulsion to make up for lost time, so Donoghue seems to have allowed his accumulated loathing for the American imperium to cause him to abandon all his former scruples in a mad, ranting rush. What we are left with, then, is an "interpretation" of the American classics that is based on hostile premises: that American "classics" are very poor classics indeed; that their shoddy workmanship and intellectual inadequacy reflect the inability of American culture to sustain and support first-rate work; and that, furthermore, they are poor classics because they did nothing to stop the onrush of demonic tendencies at the heart of American life. Or, to give you a bit more of a taste of Donoghue's own words, "the classic books do not offer any resistance to the determination of American culture to go for power, conquest, the empire of globalization—the new version of slavery—and if that doesn't make every knee bend, there are always the bombs, nuclear if necessary. If you have dropped them on Hiroshima, why not again somewhere else?"

Why not, indeed? Nor is that the only occasion in this book when Donoghue performs an uncannily realistic imitation of a college sophomore. Consider this little gem of analysis, which comes in the middle of his essay on Ralph Waldo Emerson: "I would advise anyone who proposed to speak out against the invasions of Afghanistan and Iraq to take the precaution of being already famous and therefore beyond the reach of John Ashcroft's arm. Noam Chomsky, George Soros, Edward Kennedy, Howard Dean, Paul Krugman, Sean Penn, and Maureen Dowd are unlikely to be arrested under the Patriot Act, but less visible critics, such as the editors of *Mother Jones*, have no reason to think themselves secure." Could Ashcroft be plotting, in retirement, a nuclear strike on Washington Square? One cannot be too careful. After all, if you have dropped them on Hiroshima, why not on the NYU English department?

Well, Professor Donoghue is entitled to his politics, however ill-informed and hysterical they may be. But our present concern is not with his politics, but with their effect on his literary judgment. And the result in this case is a failed book, which incongruously combines the formalist critical conventions of 50 years ago with the fashionable political slogans of today,

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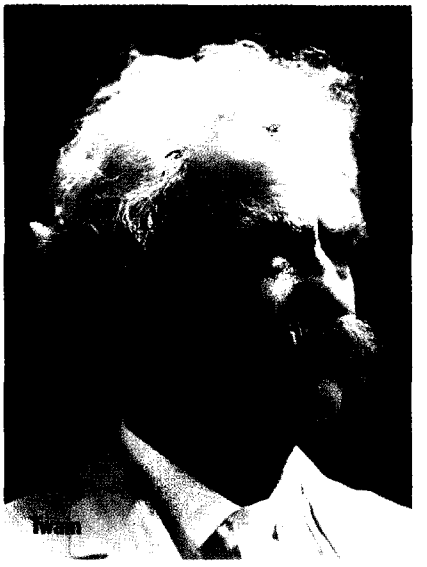
Whitman


Twain

and insists upon seeing all of American literature through a present-day radical lens—albeit one augmented by copious and constant citations from R.P. Blackmur, Yvor Winters, Northrop Frye, F.R. Leavis, F.O. Matthiessen, and a whole host of once-authoritative but long-forgotten critics. There is almost no engagement whatsoever with contemporary or recent scholarship, even to dismiss it. Not to mention the fact that the book reads as if it were dictated, with pretentious asides and long, long paragraphs, often spilling over four and five pages, with little rhyme or reason in their structure.

The end effect is exceedingly strange. In one sense, the book is too obsessed with present-day politics to be of any enduring use. (A typical quotation: "So how would I propose to read *Moby-Dick* now, now meaning since September 11, 2001 and the rise of George W. Bush as president and commander in chief?" Typically, too, he never answers it.) It will be even more of an embarrassment to its author in 5 or 10 years than it already is today. And yet, in another sense, it is a book that is enveloped in the mists of old literary theories and theorists, whose time has long ago passed, for better or worse. There is something quite incongruous about a book which complains, with great specificity, about the detention of Jose Padilla under the Patriot Act, while relying so heavily (and nearly exclusively) on the authoritative literary judgments of scholars who are long dead and little remembered, even in the academy.

Indeed, what is more disturbing, there is very little direct engagement by Donoghue with the books under study themselves. You would think that a formalist, textualist critic would . . . spend more time with the texts themselves. But you would be wrong. In successive chapters on Emerson's "The American Scholar," Herman Melville's *Moby-Dick*, Nathaniel Hawthorne's *The Scarlet Letter*, Henry David Thoreau's *Walden*, Walt Whitman's *Leaves of Grass*, and Mark Twain's *The Adventures of Huckleberry Finn*, Donoghue seems much more interested in recounting and assessing what previous scholars have written about these books than in offering his own readings.

One begins to feel that the entire subject of American literature is uncomfortably alien to this author, so much so that he has to rely on translators and field workers for second-hand information about what the native populace is up to. Such a suspicion is only heightened when he blunders and calls Mark Twain an exemplar of "Midwest" (rather than "Southwestern") humor. The only thing that can justify the publication of a book like this is the sense that one is getting a reading of enduringly valuable works through the eyes of a master, or at least of someone who offers a fresh and consistent and informed perspective on them. We get surprisingly little of either in *The American Classics*. Donoghue's immense assurance on political subjects—that is to say, on subjects of which he seems to know little—is not matched by mastery or clarity in his analysis of subjects about which he has, in the past, demonstrated that he knows a great deal. This is exactly the opposite of how it should be.

Several of the chapters do little more than set up straw men, knock them down, and then call it a day, leaving us no better off than we were before. The chapters on Melville and Twain argue that these authors' respective "classic" works were turned (by such right-wing proto-Bushies as Matthiessen and Lionel Trilling) into simplistic "Cold War" parables of, respectively, good versus evil, and racial harmony (he said it, I didn't). But suppose we never thought such ludicrous things to begin with? Donoghue is very good at asking how "should" we read this or that book, and very wanting in his answers. In the case of *Huckleberry Finn*, for example, the answer is that we should disinter William Empson's 1935 *Some Versions of Pastoral*, which would allow us to imagine "'a proper or beautiful relation between rich and poor.' Or a semblance of such a thing." Or something. Yes, that's the ticket.

There are, however, a few points where the Donoghue of old appears, and while they are not numerous enough to redeem the book, they are a glimpse of something better—and, indeed, of a better way to have approached this study. His chapter on Thoreau, far and away the best in the book, argues that Thoreau ought to be understood primarily as an autobiographical writer, and that we should guard against his being "kidnapped" by political or ideological factions, including the "ecocentrists" who have most recently sought to claim him as their own. This is an excellent point, convincingly made. "Autobiography is not a cause," he remarks, "except that it is a cause of wonder that people as strange as Augustine, Montaigne, Rousseau, and Thoreau should exist." That is the kind of humane insight we once could count on Denis Donoghue to provide. Too bad he seems to have been kidnapped himself. ♦

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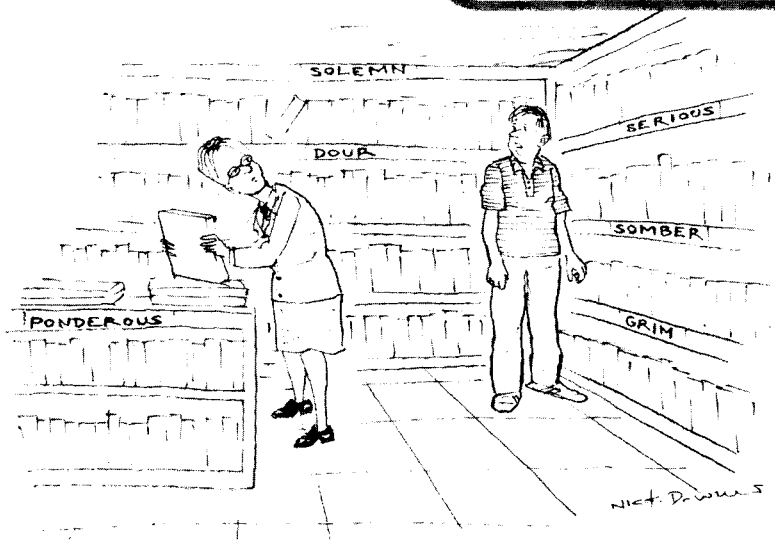
The Standard Reader



"Have you a humor section?"

Books in Brief

***Fantastic: The Life of Arnold Schwarzenegger* by Laurence Leamer (St. Martin's, 432 pp., $24.95)** "I do things my own way because my instincts are better than anyone else's researched thinking," Arnold Schwarzenegger said to Laurence Leamer, explaining his decision to announce his candidacy for governor of California on the *Tonight Show* in 2003. *Fantastic* is laced with countless quotes and stories, such as the one above, illustrating Schwarzenegger's commanding presence, instinctual decision-making, and natural boldness. Leamer captures the essence of Schwarzenegger throughout his biography, while telling the tale of how he defied the odds to conquer the world of bodybuilding, become a Hollywood star, and develop as a major political leader.

Perhaps the most interesting element of Schwarzenegger's personality that is discussed is his identity as a "people-person." Those people whom he admires such as his mentor as an Austrian youth, Alfred Gerstl, bodybuilder Joe Weider, and his wife Maria Shriver, quickly gained his trust and loyalty. Schwarzenegger's competitors and foes were the ones that bore the brunt of his ever present sophomoric pranks and insults.

Schwarzenegger's experience as an immigrant is another compelling subplot. The author explains how his politics were shaped by the contrasting experiences of his strict Austrian upbringing and later immersion in American culture.

Leamer does not make *Fantastic* into another Arnold infomercial. He writes of Schwarzenegger's promiscuity, self-absorption, and conniving antics that occurred during all stages of his life. Leamer also offers light criticism of Schwarzenegger's political career, at times suggesting the governator is more style than substance. Despite this, it is clear that Leamer respects Schwarzenegger for all he has accomplished.

Through Leamer's exceptional access to Schwarzenegger, the reader gains a more complete understanding of who he is. *Fantastic* is a rare opportunity to read a fairly portrayed account of Arnold, replete with entertaining stories and characters. Overall, *Fantastic* is a satisfying read that allows the reader a unique look into the world of Arnold Schwarzenegger.

—Jordan Fabian

***Home Invasion: Protecting Your Children In a Culture That's Gone Stark Raving Mad* by Rebecca Hagelin (Nelson Current, 288 pp., $22.99)** Rebecca Hagelin is a happily married, working (vice president of the Heritage Foundation) mom who is rearing three children.

Yes, the people enthusiastically recommending her book on the back cover are Sean Hannity, Michael Medved, Tim and Beverly LaHaye, and Laura Schlessinger. And yes, Christian faith does play an important role in her life. But this in no way should put off even the most liberal parents. Her book is packed with down-to-earth, practical, common sense advice, plus nearly forty pages' worth of names, phone numbers, addresses, and email addresses of hundreds of organizations and individuals for concerned or even desperate parents.

One of the many subjects Hagelin discusses is kids and the Internet. She cites a study done by the London School of Economics that shows 6 out of 10 children ages 9 to 19 who have Internet access have seen pornographic websites, usually while using the Internet for homework.

But it's not just porn sites that present a problem—it's email and chat rooms as well. Of the 45 million children who have Internet access, over 50 percent report having been contacted by a stranger in a chat room or through email. Hagelin also notes nearly one in three teens can access email from their own rooms, unsupervised by parents. Her solution is simple: Computers must never be set up in a child's room or behind closed doors.

Hagelin doesn't want to turn your kids into prudish goody-two-shoes, but she does want to do her part to save them from the many seductions of our advertiser- and consumer-driven age.

—Cynthia Grenier

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News Quiz

1. After the July 29, 2003 meeting at the White House between I. Lewis "Scooter" Libby and Karl Rove, which three journalists were immediately debriefed by Karl Rove?

a. Matthew Cooper, Jimmy Olsen, Judith Miller
b. Judith Miller, Matthew Cooper, Ted Baxter
c. Matthew Cooper, Brenda Starr, Judith Miller
d. Judith Miller, Wally Ballou, Matthew Cooper
e. Ron Burgundy, Matthew Cooper, Judith Miller

2. Since her incarceration at the Alexandria Detention Center, Judith Miller of the *New York Times* has been visited by

a. Ma Jarrett
b. Charles Colson
c. Helen Prejean
d. Truman Capote
e. Rick Bragg, Jayson Blair, Howell Raines, and Gerald M. Boyd

3. When Joseph Wilson IV arrived in Gabon as U.S. ambassador, to whom did he present his credentials?

a. Col. Mbawageyobe Mustard
b. The Emperor Bokassa I
c. Staff Sgt. Shadrach Ndongourabye
d. President Bongo
e. King Jaffe Joffer

4. Matthew Cooper is married to which prominent personality from the Clinton administration?

a. Carol Browner
b. Dee Dee Myers
c. Mandy Grunwald
d. Warren Christopher
e. Susan McDougal

5. President Bush affectionately refers to Karl Rove as

a. Turd Blossom
b. Mark Hanna
c. Ol' Baldy
d. McKinley Face
e. Sir

6. Her status as a CIA undercover agent required Valerie Plame to

a. Write regularly for the *New Republic*
b. Wear sunglasses
c. Marry a "distinguished diplomat"
d. Duck into the ladies' room when George Tenet walked by
e. Use the name "Mrs. Joseph Wilson IV" for restaurant reservations

7. Syndicated Columnist Robert Novak is popularly nicknamed

a. The Wanniski Priest
b. Rowland Evans
c. The Prince of Darkness
d. Michael's Evil Twin
e. Fastest Gun in the Vest

8. Special Prosecutor Patrick J. Fitzgerald

a. Once sent a judge to jail for contempt of court
b. Indicted a ham sandwich in 1991
c. Threatened Norman Pearlstine with canceling his subscription to *Time*
d. Has evidence that Karl Rove is in frequent contact with George W. Bush
e. Has subpoenaed Duncan Hines to testify about yellowcake uranium

9. Amb. Joseph Wilson IV's memoir is entitled

a. *Truth or Consequences*
b. *To Tell the Truth*
c. *The Undisputed Truth*
d. *The Politics of Truth*
e. *Truth Be a Lady Tonight*

10. The mainstream media have paid insufficient attention to

a. The Downing Street memo
b. Mark Lane's blog on Huffingtonpost.com
c. Amb. Joseph Wilson IV's coiffure
d. The Halliburton/Halle Berry/Halitosis/Richard Burton connection
e. "The Geena Davis Show"

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Popular Mobilization and Political Crisis in Bolivia

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The recent collapse of the traditional political party system as a result of popular protests and mobilizations in Bolivia is a new phenomenon in Latin America. Unlike Ecuador and Venezuela, where corruption of the traditional political class caused the regime collapses, **the change in Bolivia is due to demands for new types of representation by Amerindian and regional groups.**

This movement dates back to the Bolivian National Revolution of 1952, which granted universal suffrage, political legitimacy, land, and arms to the Indian peasants. For two generations, these peasants were a passive support group to all governments—both civilian and military—as long as the government in power delivered education, social services, and land titles to the communities.

The demands of the current generation of Amerindians go beyond local community concerns to include everything from preferential quotas to the nationalization of natural resources. The members of the dominant group in this movement are the *cholos,* who are defined as bilingual, educated, and mostly urban Amerindians. Many dress in traditional clothing and demand formal acceptance of a multiethnic state.

After the creation of more than three hundred new municipal governments in 1995, and the recognition of citizen groups and Indian pueblos as autonomous political parties in 2002, both new local leaders and reformed older politicians have emerged to replace the three parties that dominated national politics for more than twenty years. The recent protests over foreign companies' control over water systems in Cochabamba and El Alto and the debate over control of the nation's gas reserves have led to blockades of major cities and increasing demands for a decentralized state. The traditional elite has tried to negotiate these often incoherent, racist, and threatening demands with promises of constitutional reform and greater participation.

Currently, Evo Morales and his socialist party, MAS, have emerged as the most important new force. He first appeared as leader of coca farmers in the Chapare region against the U.S.-sponsored coca eradication campaigns. Although he has incorporated several highland Amerindian movements into his party, he needs the support of the Spanish middle class to go beyond the 20 percent of the vote he won in the last presidential election. Along with the popular mobilizations in the highlands, strong regionalism is also emerging in Santa Cruz under the leadership of large commercial agricultural landowners who are demanding popularly elected state legislatures and governors and greater control over their gas fields.

As Bolivia prepares for a new constitutional assembly in the upcoming months, there will be calls for abolishing the traditional centralist state and for corporate representation of communities and popular groups in the legislature alongside traditional elected representatives. Whether civil society will move in this direction depends on the willingness of both sides to negotiate. Although there is no guarantee that such negotiations will occur, the alternative would involve violence and repression on a scale unseen in Bolivia since the early 1980s.

—Herbert S. Klein

Herbert S. Klein is a Hoover fellow and director of the Center for Latin American Studies at Stanford University.

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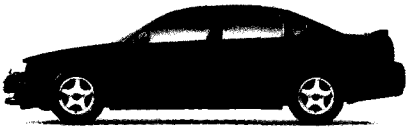
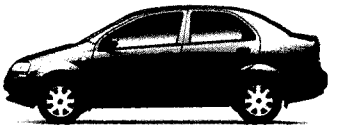
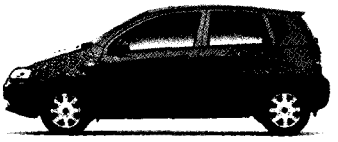
Chevrolet Cavalier: EPA est. 34 mpg hwy


Chevrolet Impala: EPA est. 32 mpg hwy

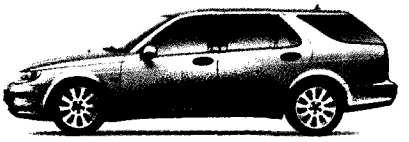

Chevrolet Aveo: EPA est. 34 mpg hwy


Chevrolet Aveo 5: EPA est. 34 mpg hwy

Pontiac Grand Am: EPA est. 34 mpg hwy

Saturn ION: EPA est. 32 mpg hwy

Chevrolet Malibu Maxx: EPA est. 30 mpg hwy

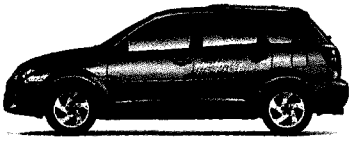

Saab 9-5 Wagon: EPA est. 30 mpg hwy

Chevrolet Monte Carlo: EPA est. 32 mpg hwy

Pontiac G6: EPA est. 32 mpg hwy

Pontiac Sunfire: EPA est. 34 mpg hwy

Saab 9-3: EPA est. 31 mpg hwy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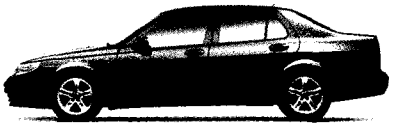
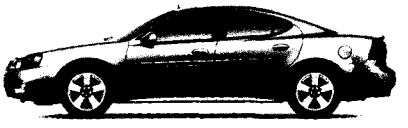
Buick Century: EPA est. 30 mpg hwy


Saab 9-5: EPA est. 30 mpg hwy

Chevrolet Classic: EPA est. 34 mpg hwy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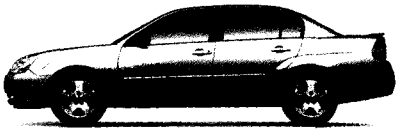
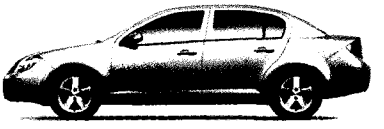

Chevrolet Malibu: EPA est. 32 mpg hwy

Saab 9-3 Linear Convertible: EPA est. 32 mpg hwy


Chevrolet Cobalt: EPA est. 32 mpg hwy

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